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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904~~ 1905.

No. ~~229~~ 36.

THE CHESAPEAKE BEACH RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 25, 1904.

(19,371.)

(19,371.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 273.

THE CHESAPEAKE BEACH RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Appellant,
vs.
THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILroad Company, a Corporation Duly Incorporated. } No. 1411.

a Supreme Court of the District of Columbia.

THE WASHINGTON, POTOMAC AND CHESAPEAKE Railroad Company, a Corporation Duly Incorporated, Plaintiff,
vs.
THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Defendant. } No. 45179. At Law.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed Jan. 13, 1902.

In the Supreme Court of the District of Columbia, this — Day of January, A. D. 1902.

THE WASHINGTON, POTOMAC AND CHESAPEAKE Railroad Company, a Corporation Duly Incorporated, Plaintiff,
vs.
THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Defendant. } At Law. No. 45179.

The Washington, Potomac and Chesapeake Railroad Company, a corporation duly incorporated according to law, by Charles Poe and

Sydney E. Mudd its attorneys, sues the Chesapeake Beach Railway Company, a corporation duly incorporated according to law, to recover the possession of the following tract and parcel of land, situate, lying and being in the District of Columbia aforesaid, being those tracts and parcels of land sixty-six (66) feet in width extending through the lands formerly owned by Mary C. and Julian W. Dean, containing together two and twenty-seven hundredths (2.27) acres, more or less, and being the same tracts and parcels of land conveyed by Mary C. and Julian W. Dean and wife by deed dated the twentieth day of June, A. D. 1884, and recorded in Liber 1084 at folio 360 *et seq.* of the land records of the District of Columbia, and further conveyed by John W. Ross, George Truesdell and Charles F. Powell, Commissioners of the District of Columbia, to Michael I. Weller and George Repetti by deed dated January the twenty-fourth, A. D. 1896, and recorded in Liber 2079, at folio 493, *et seq.* of the
2 land records of the District of Columbia, in which said described premises the plaintiff claims the fee-simple title, and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Second count. And the plaintiff also sues to recover the possession of that other piece or parcel of land, situate lying and being in the District of Columbia, and described as follows, to wit: That tract of land sixty-six (66) feet in width extending through the land now or formerly owned by John H. Wilson, said tract containing twenty-six hundredths (.26) of an acre, more or less, and being the same land conveyed by John W. Wilson and wife by deed dated the 30th day of June, A. D. 1884, and recorded in Liber 1085, at folio 483, *et seq.* and further conveyed by the above named Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti by deed dated the 24th day of January, 1896, and recorded in Liber 2079, at folio 488 *et seq.* of the land records of the District of Columbia, in which said described premises plaintiff claims the fee-simple title, and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

3 Third count. And the plaintiff also sues to recover the possession of that other piece or parcel of land, situate lying and being in the District of Columbia, and described as follows, to wit: That tract of land sixty-six feet in width extending throughout the land now or formerly owned by Robert J. Daniels, said tract of land containing one and twenty hundredths of and acre (1.20), more or less, being the same land conveyed by Robert J. Daniels and wife,

by deed dated the 19th day of June, A. D. 1884, and recorded in Liber 1087, at folio 295 *et seq.*, and further conveyed by John W. Ross, William M. Black and John B. Wight, Commissioners of the District of Columbia, to Michael I. Weller and George R. Repetti by deed dated the 12th day of November, 1897, and recorded the 13th day of November, 1897, in Liber 2277 at folio 108 *et seq.* of the land records of the District of Columbia, said tract being still more particularly described as the south part of lot thirty-three, in block seven, of section three of Burville sub-division in said District, in which said described premises the plaintiff claims the fee-simple title, and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Fourth count. And the plaintiff also sues to recover the possession of that other piece or parcel of land, situate lying and being in the District of Columbia and described as follows, to wit: That tract of land sixty-six feet in width extending through the land now or formerly owned by Margaret E. Lowerie, containing two and
4 twenty-five hundredths (2.25) of an acre, more or less, being the land heretofore conveyed by Margaret E. Lowerie by deed dated the 20th day of June, 1884, and recorded in Liber 1087 at folio 297 *et seq.* of the land records of the District of Columbia, and further conveyed by John W. Ross and George Truesdell and Charles F. Powell, Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti, by deed dated the 24th day of January, A. D. 1896, and recorded in Liber 2079 at folio 493 *et seq.* of the land records of the District of Columbia, in which said described premises the plaintiff claims the fee-simple title, and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant, entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Fifth count. And the plaintiff also sues to recover the possession of that other piece or parcel of ground, situate, lying and being in the District of Columbia, and described as follows, to wit: That tract of land sixty-six feet in width extending through the land now or formerly owned by Ann Owen containing three and thirty-nine hundredths (3.39) acres, more or less, being the land heretofore conveyed away by said Ann Owen by deed dated the 2nd day of July 1884, and recorded in Liber 1087 at folio 427 *et seq.* and still further conveyed by the Commissioners of the District of Columbia last above named to Michael I. Weller and George R. Repetti by deed dated the 24th day of January, 1896, and recorded in Liber 2079 at

folio 495 *et seq.* of the land records of the District of Columbia, in which said described premises the plaintiff claims the fee-simple title, and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same, and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon, and the appurtenances thereof, and the costs of this suit.

Sixth count. And the plaintiff also sues to recover the possession of that other piece or parcel of land, situate lying and being in the District of Columbia, and described as follows, to wit: That tract or tracts of land sixty-six feet in width, extending through the land now or formerly owned by Isabelle Johnson or Isabella Johnston and being the land conveyed by the said Isabella Johnston and her husband by deed dated July 19th, 1884, and recorded in Liber 1093, at folio 146, *et seq.* of the land records of the District of Columbia, in which said described premises the plaintiff claims the fee-simple title and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Seventh count. And the plaintiff also sues to recover the possession of that other piece or parcel of land situate lying and being in the District of Columbia, and described as follows, to wit: That tract of land sixty-six feet in width extending through the land now or formerly owned by Charles A. McEuen and conveyed away by the said Charles A. McEuen by deed dated the 6th day of December, 1884, and recorded in Liber 1110 at folio 91, *et seq.* of the land records of the District of Columbia, in which said described premises plaintiff claims the fee-simple title and of which it was lawfully seized, to wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Eighth count. And the plaintiff also sues to recover the possession of that other piece or parcel of land, situate lying and being in the District of Columbia, and described as follows, to wit: That tract of land sixty-six feet in width extending through the land now or formerly owned by Mary I. Hanson and others and conveyed away by the said Mary I. Hanson and others by deed dated the 12th day of December 1884, and recorded in Liber 1114 at folio 427 of the land records of the District of Columbia in which said described premises the plaintiff claims the fee-simple title, and of which it was lawfully seized, to wit, on the 24th day of September,

A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Ninth count. And the plaintiff also sues to recover the possession of that other piece or parcel of land, situate lying and being in the District of Columbia, and described as follows, to wit: That
7 tract of land sixty-six feet in width extending through the land now or formerly owned by John Weissner and conveyed away by said John Weissner by deed dated August 25th, 1884, and recorded in Liber 1114 at folio 429 *et seq.* of the land records of the District of Columbia, which said last mentioned tracts have been heretofore conveyed by the Commissioners of the District of Columbia last above mentioned to the said Michael I. Weller and George R. Repetti by deed dated the 24th day of January, 1896, and recorded in Liber 2079 at folio 490, of the land records of the District of Columbia, in which said described premises plaintiff claims the fee-simple title, and of which it was lawfully seized, to-wit, on the 24th day of September, A. D. 1901, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said pieces or parcels of ground with the improvements thereon and the appurtenances thereof, and the costs of this suit.

Wherefore the plaintiff brings this suit and claims the recovery of the possession of the said several parcels of land in *his* said declaration and the various counts thereof described, with the improvements thereon and the appurtenances thereunto belonging or appertaining, and the costs of this suit.

CHAS. POE,
SYDNEY E. MUDD,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof, otherwise judgment.

CHAS. POE,
SYDNEY E. MUDD,
Attorneys for Plaintiff.

8 *Plea.*

Filed February 5, 1902.

In the Supreme Court of the District of Columbia.

THE WASHINGTON, POTOMAC AND CHESAPEAKE Railroad Company, Plaintiff,
vs.
THE CHESAPEAKE BEACH RAILWAY COMPANY, Defendant.
} At Law. No. 45179.

The defendant for plea to the plaintiff's declaration, and to each count thereof, says that it is not guilty as alleged.

F. D. McKENNEY,
Attorney for Defendant.

Replication.

Filed February 15, 1902.

In the Supreme Court of the District of Columbia.

THE WASHINGTON, POTOMAC AND CHESAPEAKE Railroad Company, Plaintiff,
vs.
THE CHESAPEAKE BEACH RAILWAY COMPANY, Defendant.
} At Law. No. 45179.

The plaintiff joins issue upon the defendant's plea filed in the above entitled cause.

CHAS. POE,
SYDNEY E. MUDD,
Attorneys for Plaintiff.

9 *Memorandum.*

November 18, 1903.—Verdict for plaintiff for possession.

Supreme Court of the District of Columbia.

MONDAY, *January* 4, 1904.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

* * * * * * *

THE WASHINGTON, POTOMAC AND CHESAPEAKE Railroad Company, a Corporation, Plaintiff,
vs.
THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation, Defendant.
} At Law. No. 45179.

Upon considering the motion of the defendant for a new trial heretofore argued and submitted, it is considered that said motion be, and hereby is, overruled, and judgment on verdict ordered: Therefore, it is considered that the plaintiff recover against the defendant possession of the following nine tracts and parcels of land situate, lying and being in the District of Columbia, together with the improvements thereon, the same being described as follows, to-wit:

Those tracts and parcels of land sixty-six (66) feet in width extending through the lands formerly owned by Mary C. and Julian W. Dean, containing together two and twenty-seven hundredths (2.27) acres, more or less, and being the same tracts and parcels of land conveyed by Mary C. and Julian W. Dean and wife by deed dated the 20th. day of June, 1884, and recorded in Liber 1084 at folio 360 *et seq.*, of the land records of the District of Columbia, and further conveyed by the Commissioners of the District of Columbia to Michael I. Weller and George Repetti by deed dated January 24th, 1896, and recorded in Liber 2079 at folio 493 *et seq.*, of the land records of the District of Columbia; also that other piece or parcel of land sixty-six (66) feet in width extending through the land now or formerly owned by John H. Wilson, said tract containing twenty-six hundredths (.26) of an acre more or less, and being the same land conveyed by John W. Wilson and wife by deed dated the 30th. day of June, 1884, and recorded in Liber 1085, at folio 483 *et seq.*, and further conveyed by the above named Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti, by deed dated January 24th, 1896, and recorded in Liber 2079, at folio 488 *et seq.*, of the land records of the District of Columbia also that other tract of land sixty-six (66) feet in width extending throughout the land now or formerly owned by Robert J. Daniels, said tract of land containing one and twenty hundredths (1.20) of an acre, more or less, being the same land conveyed by Robert J. Daniels and wife, by deed dated 19 day of June 1884, and re-

corded in Liber 1087 at folio 295 *et seq.*, and further conveyed by the Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti by deed dated 12th. day
11 of November, 1897, and recorded the 13th. day of November 1897, in Liber 2277 at folio 108 *et seq.*, of the land records of the District of Columbia, said tract being more particularly described as the south part of lot thirty-three, in block seven, of section three, of Burrville subdivision in said District; also that other tract of land sixty-six (66) feet in width extending through the land now or formerly owned by Margaret E. Lowerie, containing two and twenty-five hundredths (2.25) of an acre, more or less being the land heretofore conveyed by Margaret E. Lowerie by deed dated the 20th. day of June, 1884, and recorded in Liber 1087 at folio 297 *et seq.*, of the land records of the District of Columbia, and further conveyed by the Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti by deed dated the 24th. day of January, 1896, and recorded in Liber 2079, at folio 493 *et seq.*, of the land records of the District of Columbia; also that other tract of land sixty-six (66) feet in width extending through the land now or formerly owned by Ann Owen containing three and thirty-nine hundredths (3.39) acres, more or less, being the land heretofore conveyed away by said Ann Owen by deed dated the 2nd day of July, 1884, and recorded in Liber 1087. at folio 427 *et seq.*, and still further conveyed by the Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti, by deed dated the 24th. day of January, 1896, and recorded in Liber 2079, at folio 495 *et seq.* of the land records of the District of Columbia; also that other tract or tracts of land sixty-six (66) feet in width, extending through the land
12 now or formerly owned by Isabelle Johnson or Isabella Johnston and being the land conveyed by the said Isabella Johnston and her husband by deed dated July 19th, 1884, and recorded in Liber 1093, at folio 146 *et seq.*, of the land records of the District of Columbia; also that other tract of land sixty-six (66) feet in width extending through the land now or formerly owned by Charles A. McEuen and conveyed away by the said Charles A. McEuen by deed dated the 6th. day of December, 1884, and recorded in Liber 1110 at folio 91 *et seq.*, of the land records of the District of Columbia; also that other tract of land sixty-six (66) feet in width extending through the land now or formerly owned by Mary I. Hanson and others, and conveyed away by the said Mary I. Hanson and others by deed dated the 12th. day of December, 1884, and recorded in Liber 1114 at folio 427 of the land records of the District of Columbia; and that other tract of land sixty-six (66) feet in width extending through the land now or formerly owned by John Weissner and conveyed away by said John Weissner by deed dated August 25th, 1884, and recorded in Liber 1114 at folio 429 *et seq.*, of the land records of the District of Columbia, which said last mentioned tracts have been heretofore conveyed by the Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti by deed

dated the 24th day of January, 1896, and recorded in Liber 2079, at folio 490 of the land records of the District of Columbia, together with its costs of suit to be taxed by the clerk, and have execution thereof.

13 *Memorandum.*

January 8, 1904.—Supersedeas bond fixed at $20,000.00.

Appeal.

Filed January 20, 1904.

In the Supreme Court of the District of Columbia.

THE WASHINGTON, POTOMAC & CHESAPEAKE Railroad Company *vs.* THE CHESAPEAKE BEACH RAILWAY COMpany. } At Law. No. 45179.

And now comes the defendant, The Chesapeake Beach Railway Company, and appeals to the Court of Appeals of the District Columbia from the judgment rendered against it in the above entitled cause on the 4th day of January, 1904.

F. D. McKENNEY,
J. S. FLANNERY,
Attorneys for Defendant.

Jan. 20, 1904.

Citation upon the above appeal is hereby waived.

CHAS. POE,
Attorney for Plaintiff.

14 *Memorandum.*

January 20, 1904.—Appeal bond filed.

Supreme Court of the District of Columbia, February 8, 1904.

WASHINGTON, POTOMAC & CHESAPEAKE R. R. Co., Plaintiff, *vs.* CHESAPEAKE BEACH RAILWAY Co., Defendant. } At Law. No. 45179.

Come here again the plaintiff by its attorneys and tenders to the court here its bill of exceptions taken during the trial, and prays that the same may be duly signed, sealed and made part of the record, now for then, which is accordingly done.

15 *Bill of Exceptions.*

Filed February 8, 1904.

In the Supreme Court of the District of Columbia.

WASHINGTON, POTOMAC & CHESAPEAKE RAILroad Company, Plaintiff,
vs.
CHESAPEAKE BEACH RAILWAY COMPANY.
} At Law. No. 45179.

Be it remembered that the above entitled cause came on for trial before Mr. Justice Barnard and a jury on November 17th, 1903, Messrs. Charles Poe and Samuel A. Putman appearing on behalf of the plaintiff, and Messrs. Frederic D. McKenney and John S. Flannery appearing for the defendant.

And thereupon the plaintiff to maintain the issues on its behalf joined gave in evidence,

1. An act of the Legislative Assembly of the State of Maryland, approved March 20th, 1868, entitled, "An act to incorporate the Southern Maryland Railroad Company" as the same appears in the Acts of 1868 of the Legislature of Maryland, at page 231;

2. An act of the Congress of the United States approved June 27th, 1882, entitled "An act to authorize the Southern Maryland Railroad Company to extend a railroad into and within the District of Columbia" as the same appears in volume 22, United States Statutes at Large, chapter 244, page 114;

And it was agreed by and between the attorneys for the respective parties that the printed copies of said acts as the same ap-
16 pear in the printed volumes above indicated may be referred to by either party throughout the progress of this cause when and as desired;

3. Thereupon further to maintain the issues on its behalf joined the plaintiff gave in evidence from the original land records of the District of Columbia deeds in the words and figures following, to-wit:

Liber 1084, folio 360 *et seq.*

A.

Mary C. Dean *et al.*
to
The Southern Maryland R. R. Company.
} Deed. Recorded June 27th, 1884, 3:40 p. m.

This indenture, made this twentieth day of June in the year of our Lord one thousand eight hundred and eighty four by and between Mary C. Dean, widow, and Julian W. Dean, and Kate W. B. Dean his wife, of the District of Columbia, parties of the first part, and the Southern Maryland Railroad Company, a corporation duly

chartered by the Legislative Assembly of the State of Maryland, parties of the second part, whereas, the parties of the second part, have located their roadway through that certain piece, parcel or tract of land in the District of Columbia, and belonging to the parties of the first part, which is bounded as follows, to wit: On the north by what is known as the "Sheriff" road on the south by the land of Miss Ann Owen, on the east by the land of Mrs. M. E. Lowry and on the west by the line of the Baltimore and Ohio railroad, the said roadway occupying, a strip of said land amounting to two 27/100 acres, more or less, as exhibited on the plat hereto annexed and made part of these presents. Now, therefore, this indenture witnesseth, that the said parties of the
17 first part, for and in consideration of the sum of six hundred and eighty one dollars to them in hand paid and of four (4) shares of the capital stock of the said parties of the second part of the nominal or par value of one hundred dollars per share to them in hand delivered by the said parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part, their successors and assigns the right of way through said piece, parcel or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet, and for such additional width as has been or may be found necessary for the construction and use of said railroad one half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land, and to conduct and carry water by pipes or otherwise through said lands, and to establish water stations thereon. To have and to hold the strip of land so as aforesaid, used for said roadway amounting as aforesaid to two 27/100 acres more or less, and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part, their successors and assigns, so long as the same shall be required, for the uses and purposes of said roadway. And the said parties of the first part, for the consideration aforesaid, hereby release and acquit the said parties of the second part from any further payment on account of the occupancy of said lands as well as for any damages which have accrued, or which may hereafter accrue by reason of the aforesaid location and construc-
18 tion of said railroad through said piece, parcel or tract of land.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first hereinbefore written.

MARY C. DEAN. [SEAL.]
JULIAN W. DEAN. [SEAL.]
KATE W. B. DEAN. [SEAL.]

Signed, sealed, and delivered in presence of
RUTLEDGE WILLSON.

DISTRICT OF COLUMBIA *ss:*

I, Rutledge Willson a notary public in and for the District of Columbia aforesaid do hereby certify that Mary C. Julian W. and Kate W. B Dean, parties to a certain deed bearing date 20th day of June, A. D. 1884, and hereto annexed, personally appeared before me in the District of Columbia aforesaid, the said Mary C. Dean, Julian W. Dean and Kate W. B. Dean being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Kate W. B. Dean, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her acknowledge the same to be *the* act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and seal this twenty-sixth day of June, A. D. 1884.

[NOTARIAL SEAL.] RUTLEDGE WILLSON,
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 20, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1084 fol. 360 *et seq.*, one of the land records of the District of Columbia, with the exception of the plat.

R. W. DUTTON,
[SEAL.] *Dept. Recorder of Deeds, Dist. of Col.*

19 Liber 1085, folio 483 *et seq.*

B.

John H. Wilson *et ux.* to The Southern Maryland Railroad Company.	Right of way. Recorded July 1, 1884, 1.30 p. m.

This indenture, made this thirtieth day of June in the year of our Lord one thousand eight hundred and eighty-four, by and between John H. Wilson and Sarah J. Wilson, his wife, both of the District of Columbia, parties of the first part, and the Southern Maryland Railroad Company a corporation duly chartered by the Legislative Assembly of the State of Maryland, parties of the second part, whereas the parties of the second part have located their roadway through that certain piece, parcel or tract of land in the District of Columbia and belonging to the parties of the first part, which is bounded as

follows, to wit: On the north by the lands of the heirs of Charles H. Hays, on the east by the lands of the heirs of John Ingolls, on the south by the lands of John W. Gregory and on the west by the lands of John Gainer, Charles A. McEuen and by the Burrville lots the said roadway occupying a strip of said land amounting to twenty-six one hundredths 26/100 of an acre mor- or less, as exhibited on the plat hereto annexed and made part of these presents; now therefore this indenture witnesseth, that the said parties of the first part, for and in consideration of the sum — fifty dollars ($50.00) to them in hand paid by the said parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents, do grant, bargain, sell and convey unto the said parties of the second part, their successors and assigns, the right of way through said piece,
20 parcel or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet and for such addition- width as has been or may be found necessary for the construction and use of said railroad, one-half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land, and to conduct and carry water by pipes or otherwise through said lands, and to establish water stations thereon: to have and to hold the strip of land, so as aforesaid, used for said roadway amounting, as aforesaid, to twenty-six one hundredths of an acre more or less, and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part, their successors and assigns, so long as the same shall be required for the uses and purposes of said roadway. And the said parties of the first part, for the consideration aforesaid, hereby release and acquit the said parties of the second part from any further payment on account of the occupancy of said lands as well as for any damages which have accrued or which may hereafter accrue by reason of the aforesaid location and construction of said railroad through said piece, parcel or tract of land.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

JOHN H. WILSON. [SEAL.]
SARAH J. WILSON. [SEAL.]

Signed, sealed and delivered in presence of—
RUTLEDGE WILLSON.

21 DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Rutledge Willson, a notary public in and for the District of Columbia aforesaid, do hereby certify that John H. and Sarah J. Wilson parties to a certain deed bearing date the 30th day of June,

A. D. 1884, and hereto annexed, personally appeared before me in the District aforesaid, the *the* said John H. Wilson and Sarah J. Wilson, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Sarah J. Wilson being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her acknowledged the same to be *the* act and deed, and declare- that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and seal this first day of July, A. D. 1884.

[NOTARIAL SEAL.] RUTLEDGE WILLSON,
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 20, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1085 fol. 483 *et seq.* one of the land records of the District of Columbia, with the exception of the plat.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

22 Liber 1087, folio 295 *et seq.*

C.

Robert J. Daniel *et ux.* to The Southern Md. R. R. Co. } Deed, right of way. Recorded June 26, 1884, 9 a. m.

This indenture, made this nineteenth day of June, A. D. 1884 by and between Robert J. Daniel and Adeline, his wife of Harrisburg in the State of Pennsylvania, parties of the first part, and the Southern Maryland Railroad Company, a corporation, duly chartered by the Legislative Assembly of the State of Maryland, parties of the second part; whereas the said parties of the second part have located their roadway through that certain piece, parcel or tract of land lying in the District of Columbia and belonging to the parties of the first part, which is bounded as follows, to wit: On the north by the "Burrville" (recorded) division of certain lots of ground; on the south by the land of Charles A. McEuen on the east by said land of said McEuen and the land of George Shanklin and by Saint Catherine street as the same is laid down upon said division of lots and on the west by Saint Julian or Division street and by the land of the said Charles A. McEuen, the said roadway occupying a strip of said land amounting to one and two tenths (1 2/10) acres, more or less as exhibited by the plat which is annexed to and made part

of these presents. Now therefore, this indenture witnesseth, that the said parties of the first part for and in consideration of the sum of two hundred and forty dollars to them in hand paid and of two (2) shares of the capital stock of the said parties of the second part, of the nominal or par value of one hundred dollars per share, to them in hand delivered by the said parties of the second part at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged,
23 have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part, their successors and assigns, the right of way through said piece, parcel or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet and for such additional width as has been or may be found necessary for the construction and use of said railroad, one half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land and to conduct and carry water by pipes or otherwise through said land and to establish water stations thereon: To have and to hold the strip of land so as aforesaid used for said roadway amounting as aforesaid, to one and two tenths (1 2/10) acres, more or less, and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part their successors and assigns so long as the same shall be required for the uses and purposes of said railroad. And the said parties of the first part, for the consideration aforesaid, do hereby release and acquit the said parties of the second part, their successors and assigns, from any further payment on account of the occupancy of said land as well as for any damages which have accrued, or which may hereafter accrue by reason of the location and construction of said railroad through said piece, parcel or tract of land.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

ROBERT J. DANIEL. [SEAL.]
ADELINE DANIEL. [SEAL.]

Signed, sealed and delivered in presence of—
RUTLEDGE WILLSON.

24 DISTRICT OF COLUMBIA, *To wit:*

I, Rutledge Willson, a justice of the peace in and for the District of Columbia aforesaid *and* do hereby certify that Robert J. Daniel and Adeline Daniel, his wife, parties to a certain deed bearing date the 19th day of June 1884, and hereto annexed personally appeared before me in the District aforesaid, the said Robert J. Daniel and the said Adeline Daniel, his wife, being personally well known to me

to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Adeline Daniel being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and seal this 19th day of June, 1884.

[J. P. SEAL.] RUTLEDGE WILLSON, [SEAL.]
Justice of the Peace.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 23, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1087 fol. 295 *et seq.*, one of the land records of the District of Columbia, with the exception of the plat.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

25 Liber 1087, folio 297 *et seq.*

D.

Margaret E. Lowrie to Southern Md. R. R. Co. } Deed, right of Way. Recorded June 26, 1884, 9 a. m.

This indenture, made this twentieth day of June in the year of our Lord one thousand eight hundred and eighty four by and between Margaret E. Lowrie, widow, of the District of Columbia, party of the first part, and the Southern Maryland Railroad Company a corporation duly chartered by the Legislative Assembly of the State of Maryland, and parties of the second part. Whereas the parties of the second part have located their roadway through that certain piece, parcel or tract of land in the District of Columbia aforesaid and belonging to the parties of the first part, which is bounded as follows: to wit, on the north by the road known as the Sheriff road on the south by a stream of water known as "Watt's branch," on the east by Division or St. Julien street on the land of C. A. McEuen and on the west by the land of Mrs. M. C. Dean the said roadway occupying a strip of land amounting to two and 25/100 acres, more or less as exhibited on the plat hereto annexed and made part of these presents: Now therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the sum of five hundred and fifty dollars, to her in hand paid and of six (6) shares of the capital stock of the said parties of the second part of

the nominal or par value of one hundred dollars per share to her in hand delivered by the said parties of the second part at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents, does grant, bargain, sell, and convey unto the said parties of the second part, their successors and assigns the right of
26 way through said piece, parcel or tract of land, the whole distance of said roadway through the same for a width of sixty-six (66) feet and for such additional width as has been or may be found necessary for the construction and use of said — railroad one half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land, and conduct and carry water by pipes or otherwise through said lands, and to establish water stations thereon: To have and to hold the strip of land, so, as aforesaid used for said roadway amounting as aforesaid to two and 25/100 acres more or less and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part their successors and assigns, so long as the same shall be required for the uses and purposes of said roadway and the said party of the first part, for the consideration aforesaid hereby release and acquit the said parties of the second part from any further payment on account of the occupancy of said lands as well as for any damages which have accrued or which may hereafter accrue by reason of the aforesaid location and construction of said railroad through said piece, parcel or tract of land.

In witness whereof the said party of the first part hath hereunto set her hand and seal the day and year first hereinbefore written.

MARGARET E. LOWRIE. [SEAL.]

Signed, sealed and delivered in the presence of—
RUTLEDGE WILLSON.

27 DISTRICT OF COLUMBIA, *ss:*

I, Rutledge Willson, a notary public in and for the District of Columbia aforesaid do hereby certify that Margaret E. Lowrie party to a certain deed bearing date 20th day of June A. D. 1884 and hereto annexed personally appeared before me in the District of Columbia aforesaid, the said Margaret E. Lowrie being personally well known to me to be the person who executed the said deed and acknowledged the same to be her act and deed.

Given under my hand and seal this twentieth day of June, A. D. 1884.

RUTLEDGE WILLSON,
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 23, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1087 fol. 297 *et seq.*, one of the *land records of the District of Columbia*, with the exception of the plat.

R. W. DUTTON,
[SEAL.] *Deputy Recorder of Deeds, Dist. of Col.*

28 Liber 1087, folio 427 *et seq.*

E.

Ann Owen
to
South. Md. R. R. Co. } Deed. Recorded July 3, 1884, 11.30 a. m.

This indenture made this 2nd day of July in the year of our Lord one thousand eight hundred and eighty-four by and between Ann Owen, of the District of Columbia, party of the first part, and the Southern Maryland Railroad Company, a corporation duly chartered by the Legislative Assembly of the State of Maryland, parties of the second part.

Whereas the parties of the second part have located their roadway through that certain piece, parcel or tract of land in the District of Columbia and belonging to the par*ties* of the first part, which is bounded as follows, to wit: on the north — lands of Mrs. M. C. and Dr. J. Dean, on the east by lands of Mrs. M. C. Lowry and Lincoln division, on the south — lands of John Manning and on the west by the Baltimore and Ohio railroad, the said roadway occupying a strip of said land amounting to three and thirty-nine (3 39/100) one hundredths acres more or less, as exhibited on the plat hereto annexed and made part of these presents. Now therefore this indenture witnesseth, that the said par*ties* of the first part, for and in consideration of the sum of one thousand and seventeen ($1017.00) — to her in hand paid by the said parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, h*ave* granted, bargained, sold and conveyed, and by these presents do- grant, bargain, sell and convey unto the said parties of the second part, their successors and assigns, the right of way through said piece, parcel
29 or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet, and for such additional width as has been or may be found necessary for the construction and use of said railroad, one half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land,

and to conduct and carry water by pipes or otherwise through said lands and to establish water stations thereon. To have and to hold the strip of land so, as aforesaid used for said roadway amounting as aforesaid to three and thirty nine one-hundredths acres more or less, and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part, their successors and assigns. so long as the same shall be required for the uses and purposes of said roadway. And the said party of the first part, for the consideration aforesaid, hereby releases and acquits the said parties of the second part from any further payment on account of the occupancy of said lands as well as for any damages which have accrued or which may hereafter accrue by reason of the aforesaid location and construction of said railroad through said piece, parcel or tract of land.

In witness whereof the said party of the first part have hereunto set her hand and seal *and* day and year fiirst hereinbefore written,

her
ANN x OWEN. [SEAL.]
mark

Signed, sealed and delivered in the presence of—

ALEX. W. McCORMICK.
RUTLEDGE WILLSON.

30 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, Rutledge Wil-son, a notary public in and for the District aforesaid do hereby certify that Ann Owen party to a certain deed, bearing date the 2nd day of July, A. D. 1884, and hereto annexed personally appeared before me in the District of Columbia aforesaid the said Ann Owen being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and seal, this third day of July A. D. 1884.

[NOTARIAL SEAL.] RUTLEDGE WILLSON,
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 23, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1087 fol. 427 *et seq.* one of the land records of the District of Columbia, with the exception of the plat.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

31 Liber 1093, folio 146 *et seq.*

F.

Isabella Johnson *et vir* to The Southern Md. R. R. Co. } Deed. Recorded July 23, 1884, 4 p. m.

This indenture, made this 19th day of July in the year of our Lord one thousand eight hundred and eighty four by and between Isabella Johnson and her husband Thomas J. Johnson of the District of Columbia parties of the first part, and the Southern Maryland Railroad Company, a corporation duly chartered by the Legislative Assembly of the State of Maryland, parties of the second part: Whereas, the parties of the second part have located their roadway through that certain piece, parcel or tract of land in the District of Columbia aforesaid, and belonging to the parties of the first part, which is bounded as follows, to wit: On the north by the track of the Washington and Alexander branch of the Baltimore and Ohio railroad, on the south and east by property of the said parties of the first part and on the west by Sheriff avenue the said roadway occupying a strip of said land amounting to one and 25/100 acres, more or less as exhibited on the plat hereto annexed and made part of these presents: Now therefore, this indenture witnesseth, that the said parties, of the first part, for and in consideration of the sum of three hundred and fifty dollars, to them in hand paid and of two (2) shares of the capital stock of the said parties of the second part, of the nominal or par value of one hundred dollars per share, to them in hand delivered by the said parties of the second part, at and before the sealing and delivery hereof the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second
32 part, their successors and assigns, the right of way through said piece, parcel or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet, and for such additional width as has been or may be found necessary for the construction and use of said railroad, one-half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land, and to conduct and carry water by pipes or otherwise through said lands, and to establish water stations thereon. To have and to hold the strip of land so, as aforesaid used for said roadway, amounting, as aforesaid, to one and 25/100 acres, more or less, and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part, their successors and assigns, so long as the same shall be required for the uses and purposes of said roadway. And the said parties of the first part, for the consideration aforesaid, hereby release and acquit the said parties of the sec-

ond part from any further payments on account of the occupancy of said lands as well as for any damages which have accrued or which may hereafter accrue by reason of the aforesaid location and construction of said railroad through said piece, parcel or tract of land.

In witness whereof, the said parties of the first part have hereunto set their hands and their seals the day and year first hereinbefore written.

ISABELLA JOHNSON. [SEAL.]
THOS. J. JOHNSON. [SEAL.]

Signed, sealed and delivered in presence of—
RUTLEDGE WILLSON.

DISTRICT OF COLUMBIA, *ss:*

I, Rutledge Willson, a notary public in and for the District
33 of Columbia aforesaid, do hereby certify that Isabella Johnson and Thomas J. Johnson parties to a certain deed bearing date 19th day of July, A. D. 1884, and hereto annexed, personally appeared before me in the District of Columbia, aforesaid, the said Isabella Johnson and Thomas J. Johnson being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Isabella Johnson being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledge the same to be *the* act and deed, and declares that she had willingly signed, sealed and delivered the same, and that she wished not to retract.

Given under my hand and seal this nineteenth day of July, A. D. 1884.

[NOTARIAL SEAL.] RUTLEDGE WILLSON,
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 20, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1093 fol. 146 *et seq.*, one of the land records of the District of Columbia, with the exception of the plat.

R. W. DUTTON,
[SEAL.] *Deputy Recorder of Deeds, Dist. of Col.*

34 Liber No. 1110, folio 91 *et seq.*

G.

Charles A. McEuen *et ux.* to The Southern Maryland Railroad Co. } Deed. Recorded Jan. 2, 1885, 11.40 a. m.

This indenture, made this sixth day of December in the year of our Lord one thousand eight hundred and eighty four by and between Charles A. McEuen and Olivia C. his wife of the District of Columbia parties of the first part, and the Southern Maryland Railroad Company, a corporation duly chartered by the Legislative Assembly of the State of Maryland, parties of the second part. Whereas, the parties of the second part have located their roadway through that certain piece, parcel or tract of land in the District of Columbia and belonging to the parties of the first part which is bounded as follows, to wit: On the north by the land of R. J. Daniel and the (recorded) division of Burrville lots; on the south by the lands of H. H. Lowry and Eliza D. Pierson on the east by the lands of John Gregory and John Wilson and on the west by Division *of* St. Julian street and the land of R. J. Daniel the said roadway occupying a strip of land amounting to two and 44-100 acres more or less, as exhibited on the plat hereto annexed and made part of these presents: Now, therefore this indenture witnesseth, that the said parties of the first part for and in consideration of the sum of nine hundred dollars to them in hand paid by the said parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents, do grant, bargain, sell and convey unto the said parties of the second part, their successors and assigns, the right of way through said piece, parcel or tract of land the whole distance of said
35 roadway through the same for a distance of sixteen hundred and forty-five (1645) feet more or less from the boundary line of John Wilson and John Gregory to the boundary line of Robert J. Daniel and wife and Division or St. Julian street contained within the following metes and bounds, to wit: Beginning at a point on the boundary line of the lands of John Wilson and John Gregory which point is to be the centre line of the roadway or said railroad; thence extending quite through the land of the said parties of the first part along the centre line of the present location of said railroad and being at every point a width of sixty-six (66) feet each side being at every point thirty-three (33) feet distant from said centre line, and in addition as much more land as may be occupied by the slope of any embankment said slope not to exceed one foot and one half ($1\frac{1}{2}$) horizontal for each foot vertical together with the right to take and use any water from springs or streams upon said land, and to conduct and carry water by pipes or otherwise through said lands,

and to establish water stations, thereon, to have and to hold the strip of land so, as aforesaid used for said roadway amounting as aforesaid, to two and 44-100 acres more or less and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part, their successors and assigns so long as the same shall be required for the uses and purposes of said roadway. And the said parties of the first part for the consideration aforesaid, hereby release and acquit the said parties of the second part from any further payment on account of the occupancy of said lands as well as for any damages which have accrued or which may hereafter accrue by reason of the aforesaid location and construct-d of said railroad through said piece, parcel or tract of land.

36 In witness whereof, the said parties of the first part have hereunto set their hands and their seals the day and year first hereinbefore written.

C. A. McEUEN. [SEAL.]
OLIVIA C. McEUEN. [SEAL.]

Signed, sealed and delivered in presence of—
JOHN E. BEALL.

DISTRICT OF COLUMBIA:

I, John E. Beall, a notary public in and for the District of Columbia aforesaid, do hereby certify, that Charles A. McEuen and Olivia C. his wife parties to a certain deed bearing date the sixth day of December A. D. 1884 and hereto annexed, personally appeared before me in the District of Columbia aforesaid, the said Charles A. McEuen and Olivia C. his wife being personally known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed; and the said Olivia C. McEuen being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same and that she wished not to retract it

Given under my hand and seal this sixteenth day of December, 1884.

JOHN E. BEALL,
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF RECORDER OF DEEDS, *Nov.* 20, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1110 fol. 91 *et seq.*, one of the land records of the District of Columbia, with the exception of the plat.

R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

[SEAL.]

37 Liber 1114, folio 425 *et seq.*

H.

Maria Ingle Hanson *et al.* to The Southern Md. R. R. Co. } Deed. Recorded March 19", 1885, 2.20 p. m.

This indenture, made this twelfth day of December in the year of our Lord one thousand eight hundred and eighty four by and between Maria Ingle Hanson and Grafton D. Hanson her husband, Edith Ackley and Seth M. Ackley her husband and Annie P. Potts and Templin M. Potts her husband of the city of Washington in the District of Columbia, John Ingle Cash and his wife of in the State of Texas, Frances Ingle Brooke and Edmund H. Brooke her husband of Detroit in the State of Michigan, Frances C. Barrow and David C. Barrow her husband and Walter Childs of Athens in the State of Georgia, and Osborn Ingle of Frederick in the State of Maryland, heirs at law of John H. Ingle deceased parties of the first part, and the Southern Maryland Railroad Company a corporation duly chartered by the Legislative Assembly of the State of Maryland parties of the second part.

Whereas the parties of the second part have located their roadway through that certain piece parcel or tract of land in the District of Columbia and belonging to the parties of the first part which is bounded as follows, to wit: On the north by the land of Charles Hays on the south by the land of John W. Gregory on the east by the land of John Weissner and on the west by the land of John Wilson the said roadway occupying a strip of land amounting to 28-100 of an acre more or less as exhibited on the plat hereto annexed and made part of these presents.

Now therefore this indenture witnesseth, that the said parties of the first part for and in consideration of the sum of one dol-
38 lar to them in hand paid at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part their successors and assigns the right of way, through said piece, parcel or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet, and for such additional width as has or may be found necessary for the construction and use of said railroad together with the right to take and use any water from springs and streams upon said land and to conduct and carry water by pipes or otherwise through said land and to establish water stations thereon. To have and to hold the strip of land so as aforesaid used for said roadway amounting as aforesaid to 28–100 of and acre more or less and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second

part their successors and assigns, so long as the same shall be required for the uses and purposes of said roadway. And the said parties of the first part, for and in consideration aforesaid hereby release and acquit the said parties of the second part from any other payment on account of the occupancy of said lands as well as for any damages which have accrued or which may hereafter accrue by reason of the aforesaid location and construction of said railroad through said piece, parcel or tract of land.

In witness whereof, the said part- of the first part have hereunto set their hands and seals the day and year first hereinbefore written.

39

MARIA I. HANSON. [SEAL.]
G. D. HANSON. [SEAL.]
EDITH ACKLEY. [SEAL.]
S. M. ACKLEY. [SEAL.]
ANNA POWERS POTTS. [SEAL.]
T. M. POTTS. [SEAL.]
FRANCIS I. BROOKE. [SEAL.]
E. H. BROOKE. [SEAL.]
F. C. BARROW. [SEAL.]
DAVID C. BARROW, JR. [SEAL.]
W. L. CHILDS. [SEAL.]
OBORNE INGLE. [SEAL.]

JNO. J. ENRIGHT,
WILLIAM MAY,
Witnesses as to Francis I. and E. H. Brooke.
P. B. LITTLE,
W. B. JACKSON,
N. P. C. Co., Ga.,
Witnesses as to F. C. Barrow, David C. Barrow, Jr., & W. L. Childs.

Signed, sealed and delivered in the presence of—
THOS. J. MYERS.

DISTRICT OF COLUMBIA, *To wit:*

I, Thomas J. Myers a notary public in and for the District aforesaid do hereby certify that Grafton D. Hanson and Maria Ingle Hanson his wife, Seth M. Ackley and Edith Ackley his wife, Templin M. Potts and Annie Potts his wife parties to a certain deed bearing date the twelfth day of December, A. D. 1884, and hereto annexed personally appeared before me in the said District of Columbia aforesaid the said Grafton D. Hanson, Maria Ingle Hanson, Seth M. Ackley, Edith Ackley, Templin M. Potts and Annie Potts being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed; and the said Maria Ingle Hanson wife of the said Grafton D. Hanson, and the said Edith Ackley wife of the said Seth M. Ackley and the

said Annie Potts wife of the said Templin M. Potts being by me examined privily and apart from their said husbands and having the deed aforesaid fully explained to them acknowledged the same to be their act and deed, and declared that they had willingly signed, sealed and delivered the same, and that they wished not to retract it.

Given under my hand and notarial seal this twelfth day of January 1885.

THOS. J. MYERS,
Notary Public.

[NOTARIAL SEAL.]

STATE OF MICHIGAN, *County of Wayne,* } *To wit:*

I, William May, a notary public in and for the county aforesaid do hereby certify that Edmund H. Brooke and Frances Ingle Brooke his wife parties to a certain deed bearing date the twelfth day of December 1884 and hereto annexed personally appeared before me in the county aforesaid, the said Edmund H. Brooke and Frances Ingle Brooke his wife being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed; and the said Frances Ingle Brooke wife of the said Edmund H. Brooke being by me examined privily and apart from her said husband and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and seal this twentieth day of January, A. D. 1885.

WILLIAM MAY,
Notary Public, Wayne Co., Mich.

[NOTARIAL SEAL.]

41 STATE OF MICHIGAN, *County of Wayne,* } *ss:*

I, John J. Enright, clerk for said county and clerk of the circuit court for the county of Wayne, which is a court of records having a seal do hereby certify that William May whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument and therein written was, at the time of taking such proof or acknowledgment a notary public in and for the said county appointed and qualified and duly authorized to take the same. And further that I am well acquainted with the handwriting of said notary public and verily believe that the signature to said certificate or proof of acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county at Detroit, this 20" day of January A. D. 1885.

[COURT SEAL.] JOHN J. ENRIGHT, *Clerk.*

STATE OF GEORGIA, *County of Clarke,* } *To wit:*

I, W. B. Jackson a N. P. in and for the county aforesaid do hereby certify that David C. Barrow and Frances C. Barrow his wife, and Walter Childs parties to a certain deed bearing date *bearing date* the twelfth day of December 1884 and hereto annexed personally appeared before me in the county aforesaid, the said David C. Barrow and Frances C. Barrow his wife, and Walter Childs being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed, and
42 the said Frances C. Barrow wife of the said David C. Barrow being by me examined privily and apart from her said husband and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed sealed and delivered the same, and that she wished not to retract it.

Given under my hand and seal this 11th day of February, 1885.

W. B. JACKSON,

[NOTARIAL SEAL.] *Notary Public, Clarke Co., Ga.*

STATE OF GEORGIA, *Clarke County.* }

Clerk's office, superior court of said county.

I, John I. Huggins, clerk of said court, the same being a court of record do certify that W. B. Jackson whose name is subscribed to the within acknowledgment is now and was at the time of signing the same a notary public in and for the said county duly qualified and commissioned, and that he is authorized to take oaths sign deeds &c. and that his signature is genuine and his official acts are entitled to full faith and credit.

Witness my hand and seal this 11th day of February A. D. 1885.

[COURT SEAL.] JOHN I. HUGGINS, *Clerk.*

DISTRICT OF COLUMBIA, *ss:*

I, Thomas J. Myers a notary pubic in and for the *county*
43 aforesaid do hereby certify that Osborn Ingle party to a certain deed bearing date the twelfth day of December A. D. 1884 and hereto annexed personally appeared before me in the county aforesaid the said Osborn Ingle being personally well known

to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twelfth day of January 1885.

[NOTARIAL SEAL.] THOS. J. MYERS,
Notary Public.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1114, fol. 425 *et seq.*, one of the land records of the District of Columbia, with the exception of the plat.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds.

44 Liber 1114, folio 429 *et seq.*

I.

John Wiessner
to
The Southern Md. R. R. Co. } Deed. Recorded March 19th, 1885, 2:20 p. m.

This indenture, made this 25th day of August in the year of our Lord one thousand eight hundred and eighty-four by and between John Wiessner Prince George's county in the State of Maryland party of the first part and the Southern Maryland Railroad Company a corporation duly chartered by the Legislative Assembly of the State of Maryland parties of the second part, whereas the parties of the second part have located their roadway through that certain piece parcel or tract of land in the District of Columbia and belonging to the part*ies* of the first part which is bounded as follows, to wit: On the north by land of the party of the first part on the south and east by said land and the land of the heirs of Joseph Gregory, deceased and on the west by the land of the heirs of Robert Payne deceased the said roadway occupying a strip of said land amounting to one half of one acre more or less, as exhibited on the plat hereto annexed and made part of these presents: Now, therefore this indenture witnesseth, that the said part*ies* of the first part for and in consideration of the sum of fifty dollars to him in hand paid by the said parties of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged have granted, bargained and sold and conveyed and by these presents do grant bargain and sell and convey unto the said parties of the second part, their successors and assigns, the

right of way through said piece parcel or tract of land
45 the whole distance of said roadway through the same for a width of sixty-six (66) feet, and for such additional width as has been or may be found necessary for the construction and use of said railroad one half thereof on each side of the centre line of said roadway, together with the right to take and use any water from springs or streams upon said land, and to conduct and carry water by pipes or otherwise through said lands, and to establish water stations thereon. To have and to hold, the strip of land so as aforesaid used for said roadway amounting as aforesaid to one half of one acre more or less, and the rights and privileges hereby granted to and unto the sole use and benefit of the said parties of the second part, their successors and assigns so long as the same shall be required for the uses and purposes of said roadway. And the said party of the first part for the consideration aforesaid, hereby release and acquits the said parties of the second part from any further payment on account of the occupancy of said land.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first hereinbefore written.

JOHN WIESSNER. [SEAL.]

Signed, sealed and delivered, in presence of—
RUTLEDGE WILLSON.

DISTRICT OF COLUMBIA, *ss:*

I, Rutledge Willson a notary public in and for the District of Columbia aforesaid do hereby certify that John Wiessner party to a certain deed bearing date 25th day of August, A. D. 1884, and hereto annexed personally appeared before me in the District
46 of Columbia aforesaid, the said John Wiessner being personally well known to me to be the persons who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and seal this twenty-fifth day of August, A. D. 1884.

RUTLEDGE WILLSON,
[NOTARIAL SEAL.] *Notary Public.*

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *Nov.* 20, 1903.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1114, fol. 429 *et seq.*, one of the land records of the District of Columbia with the exception of the plat.

[SEAL.] R. W. DUTTON,
Deputy Recorder of Deeds, Dist. of Col.

The plats referred to in said deeds were produced and exhibited to the jury and were referred to by the witnesses as hereinafter indicated.

4. Further to maintain the issues on its behalf joined the plaintiff gave in evidence the original decree of the supreme court of the District of Columbia passed by the Honorable William M. Merrick, an associate justice of said court, on the first day of September,
47 A. D. 1885 in equity cause No. 9442, wherein The Central Trust Company of New York was complainant and The Southern Maryland Railroad Company was defendant, which said decree is in the words and figures following, to wit:

In the Supreme Court of the District of Columbia.

Filed Sep. 1, 1885. R. J. Meigs, Clerk.

THE CENTRAL TRUST COMPANY OF NEW YORK *against* THE SOUTHERN MARYLAND RAILROAD Company.	In Equity.	No. 9442.

This cause came on to be heard at this term and was argued by counsel and thereupon upon consideration thereof it is ordered, adjudged and decreed as follows, vis:

The court finds, from the bill and answer and exhibits, that the complainant The Central Trust Company of New York is, and was at the several times in the bill of complaint mentioned, a corporation organized and existing under the laws of the State of New York, and that the Southern Maryland Railroad Company was, at the several times mentioned in the bill of complaint, and on the first day of January, 1881, and prior thereto, a corporation created by and existing under the laws of the State of Maryland, and had its principal office and place of transacting business at the city of Baltimore in said last mentioned State; and the court further finds that, on or about the first day of January, 1881 the said Southern Maryland Railroad Company, in the exercise of its lawful powers and in accordance with resolutions duly adopted by its directors and stockholders, did make and execute its bonds to the amount of one million six hundred thousand dollars, bearing date January 1st, 1881,
48 and payable January 1st, 1911, in gold coin of the United States, with interest thereon at the rate of six per cent. per annum payable semi-annually in each year on the first days of January and July, at the office of the Central Trust Company of New York upon the presentation and surrender of the coupons or interest warrants annexed to said bonds. And the court further finds, that the Southern Maryland Railroad Company did thereafter issue

and sell, or cause to be issued and sold, the said bonds to the amount of one million sixty three thousand dollars ($1,063,000.) with interest warrants or coupons attached thereto, and that the bonds so issued were authenticated by the complainant as trustee, and are now outstanding in the hands of divers persons as holders thereof.

And the court further finds, that in order to secure the payment of principal and interest of said bonds as the same should mature, the Southern Maryland Railroad Company, in the exercise of its lawful power and further in pursuance of the aforesaid resolutions, did on or about January 1st, 1881, make, execute and deliver to the complainant herein, The Central Trust Company of New York, a certain deed or indenture of trust or mortgage, bearing date January 1st, 1881, and did thereby convey to said Central Trust Company of New York as trustee, all the railroad of the Southern Maryland Railroad Company, beginning at Point Lookout, at the confluence of the Potomac river and of Chesapeake bay in the county of St. Mary's in the State of Maryland, and running thence to the city of Washington in the District of Columbia, its extensions and appurtenances, with the equipments thereof, consisting of all locomotives and cars belonging to the Southern Maryland Railroad Company
49 and used thereon, and also all the rights, liberties, privileges, immunities and franchises, of the said Southern Maryland Railroad Company, and also all the rights of way and land occupied and used in connection with or for the construction, completion and maintenance of said railroad, its extensions and branches, together with all bridges, culverts, side tracks, depot grounds, stations, machine shops, buildings and other structures, property real and personal, and improvements of every kind and description, then or thereafter to be made, acquired or erected, on or connected with the said line of railroad, and all tolls, rents and income to be had or derived from the said railroad and property, thereby mortgaged.

And the court further finds that said deed or indenture of trust or mortgage was duly recorded in the land records of the several counties where said railroad and other mortgaged property were situated and that the same became and constituted, and now is, a first and paramount lien upon said railroad and other mortgaged premises and property therein mentioned and described.

And the court further finds that on the first day of July 1881, there became due and payable upon the bonds issued as aforesaid a semi-annual instalment of the interest evidenced by the interest warrants or coupons attached to said bonds due on the day last mentioned; that the defendant The Southern Maryland Railroad Company, failed, omitted and refused to pay the interest so due and evidenced by said coupons save and excepting the amount of twelve thousand eight hundred and seventy dollars ($12870.) which said railroad company at some time after the date last mentioned
50 did pay for interest due upon certain of said coupons, and that said railroad company made default in the payment of

the sum — nineteen thousand and twenty dollars (19020.00) due for said instalment of interest on the day last mentioned.

And the court further finds that on the first day of January 1882, there became due and payable upon the bonds issued as aforesaid a semi-annual instalment of the interest evidenced by the interest warrants or coupons attached to said bonds, due on the day last mentioned; that the defendant The Southern Maryland Railroad Company failed, omitted and refused to pay the interest so due and evidenced by said coupons, save and excepting the amount of four thousand five hundred dollars ($4500) which said railroad company at some time after the date last mentioned did pay for interest due upon certain of said coupons and that said railroad company made default in the payment of the sum of twenty seven thousand three hundred and ninety dollars ($27390) due for said instalment of interest on the day last mentioned.

And the court further finds that on the first day of July 1882, there became due and payable upon the bonds issued as aforesaid, a semi-annual instalment of the interest evidenced by the interest warrants or coupons attached to said bonds due on the day last mentioned; that the defendant The Southern Maryland Railroad Company failed, omitted and refused to pay the interest so due and evidenced by said coupons save and excepting the amount of seventeen thousand one hundred dollars ($17100) which said railroad company did pay for interest due upon certain of said coupons, and that said railroad company made default in the payment
51 of the sum of fourteen thousand seven hundred and ninety dollars ($14,790) due for said instalment of interest on the day last mentioned; that a large number of the said interest warrants or coupons representing said instalments of interest due and payable July 1st 1882, were, on said last mentioned day or shortly thereafter, and before the bill of complaint was filed in this court, presented for payment at the place where the same were payable, to wit: at the office of the Central Trust Company of New York in the city of New York and payment thereof was demanded and refused, and that by such refusal default was made in the performance of the terms and conditions of said mortgage or deed of trust.

And the court further finds that since the first day of July 1882, the interest warrants or coupons attached to the bonds issued as aforesaid and falling due semi-annually, have remained wholly unpaid, and that said Southern Maryland railroad has made default in the payment of all said interest warrants or coupons which became due January 1st, 1883, July 1st, 1883, January 1st, 1884, July 1st, 1884, January 1st, 1885, July 1st, 1885; that said Southern Maryland Railroad Company has made default and has refused, neglected, or omitted for a period exceeding three months, to pay the semi annual interest due on the bonds issued as aforesaid and secured by said mortgage, after demand therefor; that thereby default has been made by said railroad company, defendant, in the performance of the terms and conditions of said mortgage, and said conditions

have become and are broken and said conveyance to the complainant as trustee has become absolute, and that the complainant as trustee as aforesaid has been requested by the holders of more than one-half in amount of all the said out-
52 standing bonds, after such default and demand of payment of said interest and after the continuance of such default for a period exceeding three months after demand for payment of said interest was duly made, to take proper proceedings to foreclose the said mortgage and to take such measures and do such acts as might be necessary or proper therefor, and to proceed according to the terms provisions and requirements of said mortgage to sell the said mortgaged property to the highest and best bidder at public auction in the city of Philadelphia.

And the court further finds that the interest now in arrear and due from the said Southern Maryland Railroad Company, on the bonds issued as aforesaid amounts to the sum of two hundred and fifty two thousand five hundred and forty dollars ($252540) in gold coin of the United States with interest at the rate of six per cent. per annum on $19020 a part of said sum from July 1st, 1881; and like interest on $27390 a part of said sum from January 1st, 1882; and like interest on $14,790 a part of said sum from July 1st, 1882; and like interest on $31,890, a part of said sum from January 1st, 1883; and like interest on $31,890; a part of said sum from July 1st, 1883, and like interest on $31,890, a part of said sum from January 1st, 1884; and like interest on $31,890, a part of said sum, from July 1st, 1884; and like interest on $31,890, a part of said sum from July 1st, 1885.

And the court further finds that all the allegations of said bill of complaint are true.

It is therefore considered, adjudged and decreed, that the said defendant The Southern Maryland Railroad Company
53 shall within thirty days from this date pay into this court for the use and benefit of the holders of said unpaid interest warrants or coupons, the said sum of two hundred and fifty two thousand five hundred and forty dollars in gold coin of the United States, with interest at the rate of six per cent. per annum from July 1st, 1881, until paid on $19,020; and from January 1st, 1882 on $27,390; and from July 1st, 1882 on $14,790; and from January 1st, 1883 on $31,890 and from July 1st, 1883 on $31,890 and from January 1st, 1884 on $31,890 and from July 1st, 1884, on $31,890; and from January 1st 1885 on $31,890 and from July 1st, 1885 on $31890 all parts of said sum of $252540, and also that within the same time said Southern Maryland Railroad Company pay into this court a sum of money sufficient to defray the costs and expenses of this suit, to wit; the sum of ten thousand dollars to be applied to the payment of the costs, charges and expenses of the complainant herein.

And it is further considered, adjudged and decreed that in default of such payment within said time by the defendant herein, all

equity of redemption of the said defendant The Southern Maryland Railroad Company of, in and to the said mortgaged premises, property, rights assets and franchises and every part and parcel thereof described, or embraced, or intended so to be, in said deed or indenture of trust or mortgage, to which and to the said bill of complainant reference is now made for a full and complete description, be foreclosed and cut off and forever barred; and that the said mortgaged property and premises, to wit: all the railroad of the Southern Maryland Railroad Company beginning at Point Lookout, at the confluence of the Potomac river and Chesapeake bay in the county of St. Mary's
54 in the State of Maryland, and running thence to the city of Washington in the District of Columbia, its extensions and appurtenances, with the equipments thereof, consisting of all locomotives and cars belonging to said Southern Maryland Railroad Company and used thereon, and also all the rights, liberties, privileges, immunities and franchises of the said Southern Maryland Railroad Company, and also all the rights of way and lands occupied and used in connection with or for the construction, completion and maintenance of said railroad its extensions and branches, together with all bridges, culverts, side tracks, depot grounds, stations, machine shops, buildings, and other structures, property real and personal, and improvements of every kind and description at the time when said mortgage was executed belonging to said railroad company, or since made, acquired or erected on or connected with, the line of said railroad, and all tolls, rents and income to be had or derived from said mortgages railroad or property, (to) be sold in accordance with the prayer of the said bill of complaint, and under the direction of the complainant, and for the benefit of the holders of said outstanding bonds and coupons, in the manner and upon the terms hereinafter prescribed.

And it is adjudged, decreed and ordered that the said mortgaged property and premises be sold as an entirety, without appraisement, and not in separate parcels.

Said property shall be sold to the highest and best bidder at public auction at twelve o'clock m. by James S. Freeman & Co., at the Philadelphia exchange in the city of Philadelphia and State of Pennsylvania, on a day to be appointed by the trustee hereinafter designated, in his advertisement of sale, and previous notice
55 of such intended sale shall be given by said trustee or commissioner by publication to be made once every week for at least three months prior to the day of sale in two daily newspapers of general circulation, published in the city of Baltimore, State of Maryland; but the said trustee or commissioner may for good cause at the time and place appointed as aforesaid, and thereafter at the same place, from time to time, adjourn said sale for periods, not exceeding in all three months, and may, without further notice, proceed with said sale on any day to which the same may have been thus adjourned. And the trustee or commissioner may give such further notice of sale in addition to the notice above prescribed, as

he may think proper or as the complainant may request. The complainant The Central Trust Company of New York, may bid at said sale and purchase said property, on behalf and for the benefit of the holders of said outstanding bonds and coupons, and for a price not exceeding the amounts due thereon, principal and interest, and any bondholder may also bid and purchase at said sale to protect his own interest; and the said trustee or commissioner making such sale, shall accept no bids from any bidder of a sum less than twenty five thousand dollars, nor from any bidder who shall not first place in the hands of said trustee or commissioner, or deposit with him, as a pledge that he will make good his bid in the event of its acceptance by the court, the sum of ten thousand dollars in cash, or bonds issued and outstanding as aforesaid to the amount of fifty thousand dollars, exclusive of interest,

And it is further ordered that of the price for which said property shall be sold, there shall be sold at the sale in cash not less than the sum of ten thousand dollars, and also such further portions
56 of said purchase price shall be paid in cash as this court may in this cause from time to time direct, in order to meet the expenses of this proceeding and the court reserves the right to resell said premises and property upon failure of the purchaser for twenty days to comply with any order, of the court in that regard. The balance of said purchase price not required to be paid in cash, may either be paid in cash, or the purchaser may satisfy and make good said balance of his bid, in whole or in part, by paying, over said outstanding bonds and overdue and unpaid coupons or either, at such price or value as may be equivalent to the amount that the holders thereof would be entitled to receive thereon in case the entire amount of the bid were paid in cash. Any bond or bonds that may be used to make such payment shall be surrendered to the commissioner and cancelled if the whole amount due thereon is applied upon the purchase price; but if less than said whole amount is required then the amounts so applied shall be stamped or written on such bond or bonds, which shall then be returned to the holder.

It is further considered, adjudged, and ordered, that the fund to arise from said sale shall be applied as follows, to wit:

First. To the payment of the costs of this suit and the compensation of the complainant for its services and payment of its charges and expenses, including its counsel fees, in the execution of said trust, and all proper expenses of said sale and to the payment of such compensation as may be awarded by the court to the said trustee, or commissioner for his services in making the sale, the same being first reported to the court.

57 Second. To the payment of the principal and interest of said outstanding bonds and coupons, without preference; and it is adjudged, decreed and hereby ordered that the principal of all said outstanding bonds shall upon the sale of said property be and become forthwith due and payable, in accordance with the provisions of said mortgage.

Third. The surplus, if any, shall be paid into this court subject to its further order and disposition.

And it is further considered, decreed and ordered that Anthony M. Zane of the city of Philadelphia be and he is appointed and directed as trustee or special commissioner to make the sale hereby decreed, and to execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof, and to report his proceedings to this court with all convenient speed. The said commissioner before entering upon the discharge of his duties shall file with the clerk of this court a bond to the United States of America with sufficient surety or sureties to be approved by the court or the clerk in the sum of twenty thousand dollars conditioned for the faithful performance of his duties under this decree, and of any further order of this court in the premises.

The said trustee or commissioner shall deliver to the purchaser or purchasers at said sale, the said deed of conveyance, when the purchase price shall be fully paid, in accordance with this decree.

And it is further adjudged and decreed that the purchaser or purchasers of the property herein ordered to be sold shall be invested with and small hold, possess and enjoy, the said mortgaged premises and property herein decreed to be sold, and all the
58 rights, privileges and franchises appertaining thereto, as fully and completely, as the said Southern Maryland Railroad Company, defendant herein, now holds and enjoys, or at the time of the commencement of this suit held and enjoyed, or is or was, entitled to hold or enjoy, the same; and further, that said purchaser or purchasers shall have and be entitled to hold said railroad and property free and discharged of and from the lien of the mortgage herein mentioned and from the claims of all parties to this suit.

And the court reserves the right to make such further order at the foot of this decree as may seem to it proper.

WM. A. MERRICK, *A. J.*

And also gave in evidence the report of Anthony M. Zane, trustee, the person named in said decree to make sale of the mortgaged property therein described, which said report was filed, in said cause and is in the words and figures following, to-wit:

Filed January 18, 1885. R. J. Meigs, Clerk.

In the Supreme Court for the District of Columbia.

THE CENTRAL TRUST COMPANY OF NEW YORK
vs.
THE SOUTHERN MARYLAND RAILROAD COMPANY.

Trustee's Report of Sale.

To the honorable the judges of the supreme court for the District of Columbia:

The report of Anthony M. Zane, trustee, appointed by the decree in the case and also by a similar decree passed in a case be-
59 tween the same parties in the circuit court of the United States for the district of Maryland to make sale of the mortgaged property mentioned in these proceedings, being the Southern Maryland railroad and all its equipments and appurtenances of every description, respectfully shows:

That after filing an approved bond in each of said cases in the penalty as described by the terms of the said decrees respectively and after giving notice of the time, place and terms of sale by advertisements published twice a week for three months in the Baltimore Sun and Baltimore Herald, two newspapers published in the city of Baltimore of which the subjoined advertisement is a copy.

Office of Morning Herald.

Established 1875. Wm. J. Hooper, proprietor, Baltimore, Md.

BALTIMORE, *January 16th*, 1886.

I hereby certify that the annexed advertisement of chancery sale of the Southern Maryland railroad was published in the Morning Herald, a daily newspaper printed and circulated in the city of Baltimore, once a week for fourteen consecutive weeks.

First insertion October 8th, 1885.

WM. J. HOOPER,
Per E. M. CLARKE.

(NOTE.—Copy of advertisement omitted. It being agreed by attorneys for the respective parties that it described the lands *etcetera* covered by the foregoing decree in the words of said decree.)

60 Office of the Sun.

BALTIMORE, *Jan'y* 15, 1886.

We hereby certify that the annexed advertisement of chancery sale of the Southern Maryland railroad was published in the Sun, a

daily newspaper printed and published in the city of Baltimore from October 8, to Jan'y 7, once a week, first insertion Oct. 8, 1885. Cost $—.

A. S. ABELL & CO.,
Per C. J. HAMILTON.

(NOTE.—Copy of this advertisement also omitted under same agreement as next above.)

and by an advertisement on October 7th, 1885 in the Philadelphia Record, a newspaper of large circulation in the city of Philadelphia, he attended personally at the Philadelphia exchange the place of sale mentioned in said advertisement at twelve o'clock noon on Wednesday the thirteenth day of January 1886, the same being the time mentioned in said advertisement and then and there through Mess. James A. Freeman & Co., auctioneers sold the said mortgaged property and premises to Franklin E. Gregory, who as your trustee is informed and believes represents in said purchase a large proportion of the bondholders at and for the price of seventy-five thousand dollars, he being then and there the highest bidder and having at the time his bid was accepted actually placed in the hands of the trustee fifty thousand dollars of the first mortgage bonds required by the decree to be placed in his hands and deposited with him.

61 The trustee further reports that after a bid of seventy-five thousand dollars was made by said Franklin E. Gregory, Mr. William H. Wile made a bid of one hundred thousand dollars your trustee thereupon called upon said Wile to pay in cash to him the sum of ten thousand dollars authorized by the decree to be demanded from bidders before any bid from them could be accepted or to place in the trustee's hands fifty thousand dollars of said first mortgage bonds before he would accept the said bid. Said Wile declined to pay said sum of ten thousand dollars in cash but produced and handed to your trustee eight bonds for one thousand dollars each and then showed to your trustee a paper purporting to be a receipt signed by H. F. Spaulding president of the Central Trust Company of New York and bearing date some time in the year 1883, reciting that said trust company had received from Daniel Haddock Jr. forty two thousand dollars of said bonds endorsed upon which receipt there was an order purporting to be signed by said Daniel Haddock Jr. and directing said bonds to be delivered to said William H. Wile.

Your trustee believing that the acceptance by him of said eight bonds and said alleged receipt would not be a compliance with the terms of the decree and being unwilling to take upon himself the responsibility of modifying or departing from the terms of said decree, expressed his reluctance and unwillingness to accept said bid and thereupon some consultation was had between counsel and said William H. Wile wrote what purported to be an order to deliver

said bonds but was unwilling and refused to fill up said half written order with the name of your trustee, but insisted upon leaving blank the name on said partially written order and also declined to sign.

62 Said Wile having thus failed and refused to pay the sum ten thousand dollars in cash and having also failed and refused to place in the hands of your trustee fifty thousand dollars of bonds and having also declined even to fill up said order on the back of said receipt with the name of your trustee and to sign the same, your trustee declined to accept his pretended bid and instructed the auctioneers Mess. James A. Freeman & Co., to disregard his said bid and there being no other or higher bidder, the mortgaged property and premises were struck off and sold to, Franklin E. Gregory as hereinbefore stated.

ANTHONY M. ZANE.

STATE OF PENNSYLVANIA, } *To wit:*
City of Philadelphia, }

I hereby certify that on the fourteenth day of January, 1886 before me the subscriber a notary public for the Commonwealth of Pennsylvania residing in the city of Philadelphia personally appeared Anthony M. Zane, and made oath in due form of law that the matter and things stated in the foregoing report are true and that the sale therein reported was fairly made.

FRANK A. MILLIKIN,
[SEAL.] *Notary Public*, 712 *Walnut St., Philadelphia, Pa.*

STATE OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

Affidavit.

I, William B. Mann, prothonotary of the courts of common pleas of said county, the same being a court of record, do certify that
63 Frank A. Milliken, Esquire, before whom the annexed affidavit was made, was at the time of so doing a notary public for the Commonwealth of Pennsylvania, residing in the county of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments, &c., and to all whose acts, as such, full faith and credit are and ought to be given, as well in court of judicature as elsewhere; and that I am well acquainted with the handwriting of the said notary public, and verily believe his signature thereto is genuine, and that said affidavit purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court, this 14th day of January, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] WILLIAM B. MANN,
Prothonotary.

(Established March 23rd, 1818.)

James A. Freeman & Co., auctioneers, No. 422 Walnut street.

PHILADELPHIA, *Jan'y* 13, 1886.

Anthony M. Zane, Esq.

SIR: In obedience to your instructions, we sold this day Wednesday, January 13th. 1886, at *at* the Philadelphia exchange, in the city of Philadelphia, by virtue of a decree of the circuit court of the United States for the district of Maryland, and of a decree of the supreme court of the District of Columbia, all the railroad of the Southern Maryland Railroad Company, its extensions and 64 appurtenances with the equipments thereof. The property was struck off to Franklin H. Gregory, Esq., agent No. 66 Chauncey St. Boston, for the sum of seventy-five thousand dollars, ($75,000) he being, under the terms of sale, the highest and best bidder for the same.

Very respectfully, JAMES A. FREEMAN & CO.

Which said report was finally ratified and confirmed by the court on the first day of March, A. D. 1886.

5. Thereupon further to maintain the issues on its behalf joined plaintiff gave in evidence a deed from Anthony M. Zane, trustee, to Franklin E. Gregory which deed is in the words and figures following, to wit:

Liber 1184, folio 265 *et seq.*

Anthony M. Zane, Tr., to Franklin E. Gregory. } Deed. Recorded June 7, 1886, 10 a. m. (10).

This deed made this ninth day of March in the year eighteen hundred and eighty six by Anthony M. Zane of the city of Philadelphia in the State of Pennsylvania trustee as hereafter recited of the first part, and Franklin E. Gregory of Framingham in the State of Massachusetts of the second part, whereas, by a decree of the circuit court of the United States for the district of Maryland bearing date the twenty-fifth day of August in the year eighteen hundred and eighty-five and passed in the cause therein depending in which The Central Trust Company of New York was complainant and The Southern Maryland Railroad Company was dependant, and whereas, by a decree of the supreme court of the District of Co-

lumbia, bearing date the first day of September in the same
65 year and passed in a cause between the said Central Trust Company of New York and said Southern Railroad Company the above named Anthony M. Zane was appointed trustee to sell the property in said two proceedings mentioned and whereas, the said Anthony M. Zane trustee after complying with all the previous requisites of the said decree did sell on the thirteenth day of January in the year eighteen hundred and eighty six to the said Franklin E. Gregory for the sum of seventy five thousand dollars the whole of the mortgaged property directed by said decrees to be sold and were particularly described as follows: All the railroad of the Southern Maryland Railroad Company beginning at Point Lookout at the confluence of the Potomac river and Chesapeake bay in the county of Saint Mary's in the State of Maryland and running thence to the city of Washington in the District of Columbia its extensions and appurtenances, with the equipments thereof consisting of all locomotives and cars belonging to said Southern Maryland Railroad Company and used thereon and also all the rights, liberties, privileges, immunities and franchises of the said Southern Maryland Railroad Company and also all the rights of way and lands occupied and used in connection with or for the construction, completion and maintenance of said railroad its extensions and branches together with all bridges, culverts, side tracks depot, grounds, stations, machine shops buildings and other structures property real and personal and improvements of every kind and description belonging to said company and all tools, rents and income to be had or derived from said mortgaged railroad or property, and whereas, the said *state* has been duly reported
to and finally ratified by the said circuit court of
66 the United States for the district of Maryland and by the said supreme court of the District of Columbia, respectively, now this deed witnesseth, that the said Anthony M. Zane trustee as aforesaid for and in consideration of the premises and of the payment to him of the said sum of seventy-five thousand dollars by the said Franklin E. Gregory the receipt whereof is hereby acknowledged doth grant, assign and convey to said Franklin E. Gregory his heirs personal representatives and assigns all the property real and personal hereinbefore described and all the right, title, interest and estate therein of all the parties to said two causes and all persons claiming by, through or under them, witness my hand and seal.

ANTHONY M. ZANE, *Trustee.* [SEAL.]

Witness:

CHAS. F. VAN HORN.
ROB'T H. GOOD.

STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

I, hereby certify that on this ninth day of March in the year eighteen hundred and eighty six before the subscriber a notary public duly commissioned and qualified and residing in said city of Philadelphia personally appeared Anthony M. Zane, trustee, and acknowledged the aforegoing deed to be his act, witness my hand and official seal this ninth day of March A. D. 1886.

CHAS. F. VAN HORN,
[NOTARIAL SEAL.] *Notary Public.*

67 STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I, William B. Mann prothonotary of the court of common pleas of said county, do certify that Chas. F. Van Horn Esquire whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a notary public for the Commonwealth of Pennsylvania residing in the county aforesaid duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands and tenements in said State of Pennsylvania and to all whose acts *are* such full faith and credit are and ought to be given as well in courts of judicature as elsewhere said court being a court of record, and that I am well acquainted with the handwriting of the said notary public and verily believe his signature thereto is genuine, and I further certify that the said instrument is *excepted* and acknowledged in conformity with the laes of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 9″ day of March in the year of our Lord one thousand eight hundred and eighty-six (1886).

WILLIAM B. MANN,
[COURT SEAL.] *Prothonotary.*

6. Further to maintain the issues on its behalf joined the plaintiff gave in evidence a certified copy of the articles of incorporation of the Washington and Potomac Railroad Company in the words and figures following, to wit:

68 This certificate of incorporation made this first day of April in the year eighteen hundred and eighty-six (1886) by Franklin E. Gregory, Benjamin F. Brooks, J. Otis Wetherbee and Tallmadge A. Lambert.

Whereas under a decree of the circuit court of the United States for the district of Maryland, passed in the cause therein depending, wherein The Central Trust Company of New York was complainant, and The Southern Maryland Railroad Company was defendant, for

the foreclosure of the mortgage or deed of trust made the first day of January A. D. 1881, by the said The Southern Maryland Railroad Company to the said The Central Trust Company of New York and also under a decree of the supreme court of the District of Columbia, passed in a cause therein between the same parties for the like foreclosure of said mortgage, the said The Southern Maryland railroad and all the property and property rights of every description of the said The Southern Maryland Railroad Company were ordered and decreed to be sold as therein provided.

And whereas afterwards in pursuance of said two decrees Anthony M. Zane the trustee appointed in and by said decrees to make said sale, sold the said railroad and all its appurtenances of every character to said Franklin E. Gregory at and for the sum of seventy-five thousand dollars.

And whereas the said sale so made by said Anthony M. Zane, trustee, was duly reported to and finally ratified by the said circuit court of the United States for the district of Maryland and by the said supreme court of the District of Columbia as by reference to the proceedings thereof in said two causes respectively will more fully appear,

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And whereas the whole of the purchase money has been fully paid by said Franklin E. Gregory and a deed of the property so sold has been duly executed and delivered by said Anthony M. Zane, trustee, to said Franklin E. Gregory; and the said Franklin E. Gregory has associated Benjamin F. Brooks, J. Otis Wetherbee and Tallmadge A. Lambert with himself as incorporators as authorized by an act of the General Assembly of Maryland, passed at the session of 1886, entitled "An act to organize into a corporation the purchaser or purchasers of any railroad or railroads located within this State."

Now this certificate witnesseth that the said Franklin E. Gregory and his said associates Benjamin F. Brooks, J. Otis Wetherbee and Tallmadge A. Lambert have incorporated themselves and do hereby incorporate themselves as a body corporate according to the terms and provisions of the hereinbefore recited act of the General Assembly of Maryland passed at the present session thereof, with the rights and privileges and subject to the liabilities and restrictions therein mentioned under the articles, conditions and provisions following, to-wit:

1st. First. The corporate name of the corporation hereby formed and organized shall be the Washington and Potomac Railroad Company.

2nd. Second. The object of said corporation is to own, possess, maintain and operate said railroad. Beginning at Point Lookout at the confluence of the Potomac river and the Chesapeake bay in the county of St. Mary's in the State of Maryland, and running thence through the counties of St. Mary's, Charles and Prince George's to the city of Washington, in the District of Columbia and its extentions with such branch lines of railroad as

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the said corporation under said act of assembly shall see fit to build and operate.

3rd. Third. The capital stock of said corporation shall be four millions of dollars, divided into forty thousand shares of the par value of one hundred dollars each; of which two hundred and fifty thousand dollars shall be preferred stock, and three millions seven hundred and fifty thousand dollars shall be common stock, the whole of which stock is to be issued as fully paid up stock.

Sixteen hundred and thirty shares of said common stock amounting to one hundred and sixty-three thousand dollars to the State of Maryland and the remainder in part payment for the road as purchased and for the construction and equipment thereof.

4th. Fourth. The directors to manage the affairs of the said corporation shall be nine and the names of the said directors for the first year are as follows, viz: Royal M. Pulsifer, Adolphus Merriam, Benjamin F. Brooks, J. Otis Wetherbee, John M. Broome, John P. Poe, Franklin E. Gregory, Frank Hume and Albert C. Howard.

Witness our hands and seals this first day of April in the year eighteen hundred and eighty-six (1886).

FRANKLIN E. GREGORY. [SEAL.]
BENJAMIN F. BROOKS. [SEAL.]
J. OTIS WETHERBEE. [SEAL.]
TALLMADGE A. LAMBERT. [SEAL.]

Witnessed by—
J. L. MEIGS.

71 STATE OF MARYLAND, *Prince George's County,* } *To wit:*

I hereby certify that on this 1st day of April A. D. 1886, before the subscriber a justice of the peace of said State in and for said county, personally appeared Franklin E. Gregory, Benjamin F. Brooks, J. Otis Wetherbee and Tallmadge A. Lambert and each acknowledged the aforegoing certificate of incorporation to be their respective acts.

JAMES HARRIS, *J. P.,*
Justice of the Peace of the State of Maryland in and for Prince George's County.

STATE OF MARYLAND, *Prince George's County,* } *sct:*

I hereby certify, that James Harris, Esquire, before whom the annexed acknowledgements were made, and who has thereto subscribed his name, was at the time of so doing, a justice of the peace of the State of Maryland, in and for Prince George's county, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments.

I further certify that I am acquainted with the handwriting of the said justice, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand and affix the seal of the circuit court of Prince George's county, this 1st. day of April, A. D. 1886.

[SEAL.] JOHN W. BELT,
Clerk of the Circuit Court for Prince George's County, Md.

72 I, John B. Brooke, one of the judges of the seventh judicial circuit of the State of Maryland, do hereby certify that the aforegoing certificate has been submitted to me for my examination, and I do further certify that the said certificate is in conformity with the provisions of the law authorizing the formation of said corporation.

JOHN B. BROOKE, *A. J.*

1 April, 1886.

Endorsed.

STATE DEPARTMENT, ANNAPOLIS, MD.:

Filed for record on the 1st day of April, 1886, at 9 o'clock a. m., and same day recorded in Record Book of Railroad Corporations, No. 1, folio 198, etc.

E. W. LE COMPTE,
Secretary of State.

THE STATE OF MARYLAND:

OFFICE OF THE SECRETARY OF STATE.

I, Wilfred Bateman, secretary of state, of the State of Maryland, do hereby certify that the foregoing is a true and correct copy of the certificate of incorporation of the Washington and Potomac Railroad Company, as the same appears of record in the office of the secretary of state.

In testimony whereof, I have hereunto set my hand and, by order of the governor, attested by his signature, have affixed the [SEAL.] great seal of the State of Maryland, this 28th day of October one thousand nine hundred and three.

73 JOHN WALTER SMITH.

By the governor:

WILFRED BATEMAN,
Secretary of State.

(Copy)
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7. Plaintiff also gave in evidence a deed from Franklin E. Gregory to Washington and Potomac Railroad Company in the words and figures following, to-wit:

Liber 1184, folio 267 *et seq.*

Franklin E. Gregory to Washington — Potomac R. R. Co. } Deed. Recorded June 7, 1886, 10 a. m. (11).

This deed *is* made this first day of April eighteen hundred and eighty six (1886) by Franklin E. Gregory of Framingham in the Commonwealth of Massachusetts and Sarah Frances his wife, witnesseth, that in consideration of twenty-five hundred shares of the preferred stock, ten thousand shares of the common stock and five hundred thousand dollars of the first mortgage bonds of the Washington and Potomac Railroad Company the said Franklin E. Gregory and Sarah Frances his wife do grant, assign and convey unto the said Washington and Potomac Railroad Company a corporation duly formed and organized under the laws of the State of Maryland and exercising franchises therein all the railroad beginning at Point Lookout at the confluence of the Potomac river and Chesapeake bay in the county of Saint Mary's and running thence to the city of Washington in the District of Columbia its extensions
74 and appurtenances with the equipment thereof consisting of all locomotives and cars belonging to said *locomotives and cars belonging to said* railroad and used thereon and also all the rights, liberties and privileges immunities and franchises of said railroad and also all the rights of ways and lands occupied and used in connection with or for the construction, completion and maintenance of said railroad its extensions and branches together with all bridges, culverts, side tracks, depot grounds stations, machine shops, buildings and other structures, property real and personal and improvements of every kind and description and all tolls, rents and income to be had or derived from said railroad or property late of the Southern Maryland Railroad Company, being the same property conveyed to the said Franklin E. Gregory by Anthony M. Zane trustee by deed dated the ninth day of March A. D. 1886 and duly recorded with this deed, and the said Franklin E. Gregory covenants that he will execute such other assurance as may be requisite.

In witness whereof, we have hereunto set our hands and seals.

FRANKLIN E. GREGORY. [SEAL.]
SARAH F. GREGORY. [SEAL.]

Sealed and delivered in presence of us

ELIZA C. BIRD.
ANNA E. GREGORY.

COMMONWEALTH OF MASSACHUSETTS, } *To wit:*
County of Middlesex, }

I, Frederick M. Esty a notary public duly appointed, qualified and acting in and for the county of Middlesex aforesaid, do hereby certify that Franklin E. Gregory and Sarah F. Gregory his wife parties to the foregoing deed bearing date on the first day of April A. D. 1886 personally appeared before me this day at Fram-
75 ingham in the county aforesaid, said Franklin E. Gregory and Sarah F. Gregory being personally well known to me as the persons who executed the said deed and acknowledged the same to be their act and deed, and the said Sarah F. Gregory wife of the said Franklin E. Gregory being by me examined privately and apart from her said husband and having the deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and seal at said Framingham this nineteenth day of May A. D. 1886.

[NOTARIAL SEAL.] FREDERICK M. ESTY,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S OFFICE, BOSTON, *May* 20, 1886.

I hereby certify that at the date of the attestation hereto annexed, Frederick M. Esty was a notary public for the county of Middlesex in the said Commonwealth, duly commissioned and constituted, and that to his act- and attestations, as such, full faith and credit are and ought to be given in and out of court.

In testimony of which, I have hereunto affixed the seal of the Commonwealth the date first above written.

[COMMONWEALTH SEAL.] HENRY B. PIERCE,
Secretary of the Commonwealth.

8. Plaintiff also gave in evidence a deed from Washington and Potomac Railroad Company to Union Trust Company of Philadelphia in the words and figures following, to-wit:

76 Liber 1148, folio 269 *et seq.*

Washington — Potomac Railroad Company to Union Trust Company of Philadelphia. } Mortgage. Recorded June 7, 1886, 10 a. m. (12).

This indenture, of mortgage made this first day of April in the — eighteen hundred and eighty-six by and between the Washington and Potomac Railroad Company a corporation duly incorporated and organized under the laws of the State of Maryland and of the

United States and located in the city of Baltimore in said State of Maryland party of the first part, and the Union Trust Company of the City of Philadelphia a corporation duly incorporated and organized under and according to the laws of Pennsylvania party of the second part., witnesseth: That whereas the Washington and Potomac Railroad Company by the provisions of the act of the State of Maryland under which it is incorporated has power to make and issue bonds bearing such rate of interest not exceeding six per cent. per annum payable at such times and places and in such amount or amounts as it may deem expedient and to sell and dispose of such bonds at such prices, and in such manner as it may deem proper and to secure the payment of such bonds by its mortgage or deed of trust of its railroad or any part thereof its franchise and its real and personal property whether then held — thereafter acquired, and whereas at a meeting of said Washington and Potomac Railroad Company held April 1st 1886 at Hotel Reimert in Baltimore in said Maryland at which all the corporators therein were present and acting the following resolves were unanimously adopted and passed viz: That for the purpose of paying in part for the
77 railroad and property purchased by said corporation and for the purpose of constructing and completing its railroad and for other lawful purposes the Washington and Potomac Railroad Company make and issue coupon bonds in its name to the amount of $1500.000 which bonds shall be of the denomination of $1000, each, payable to bearer on the first day of April in the year 1916 in gold coin of the United States and shall draw interest at the rate of six (6) per cent. per annum payable in like gold coin and said bonds shall be numbered from one to one thousand five hundred both inclusive and all said bonds shall be signed by the president and treasurer and sealed with the seal of this corporation and be authen-cated by the certificate of the Union Trust Company and shall have attached thereto, proper interest warrants with the name of the treasurer engraved thereon, and said bonds, warrants and certificates shall be in the form and terms following, to wit:

$1000. UNITED STATES OF AMERICA, *State of Maryland.* $1000.

No. —.

Six per Cent. First Mortgage Gold Bond of the Washington and Potomac Railroad Company.

Know all men by these presents: That the Washington and Potomac Railroad Company a corporation duly established and organized under the laws of the State of Maryland and of the United States is indebted to the Union Trust Company of the City of Philadelphia in the State of Pennsylvania in the sum of one
78 thousand dollars which sum it promises to pay to the bearer hereof on the first day of April, A. D. 1916 with interest at

the rate of six per cent. per annum payable semi-annually on the first day of April and October in each year on presentation and surrender of the proper coupon hereto annexed said principal and interest being payable in gold coin of the United States at the promissor's office in the city of Baltimore or at the office of said trust company in the city of Philadelphia, This bond is one of a series of fifteen hundred bonds each of the denomination of one thousand dollars numbered from one to fifteen hundred and all of even date herewith amounting altogether to one million five hundred thousand dollars, to which amount the issue is limited secured by a trust mortgage made by said Washington and Potomac Railroad Company on its railroad extending from the city of Washington to Point Lookout in said Maryland and on all its branches constructed and to be constructed and on its corporate rights and franchises and on all its real and personal property now owned by it or hereafter to be acquired and subject to the terms and conditions of said trust mortgage which trust mortgage has been duly executed and delivered by said railroad company to said trust company as trustee and duly recorded and is a first lieu on all the property therein described, This bond may be registered at the office of said railroad company in said city of Baltimore at the option of its holder and thereafter, unless at any time registered payable to bearer will be only payable to such person as on this bond shall appear from time to time to be the last duly registered transferee or owner thereof,

but the registry of this bond shall not impair the negotiability
79 of its coupons by delivery. This bond shall be valid only when authenticated by a certificate endorsed hereon signed by said trust company,

In witness whereof the said Washington and Potomac Railroad Company has caused its corporate seal to be affixed to this bond and the same to be signed by its president and treasurer under date of April 1st. 1886.

—— ——, *President.*
—— ——, *Treasurer.*

The Washington & Potomac Railroad Company

Will pay the bearer *in* the first day of —— $30. in gold at its office in the city of Baltimore or at the office of the Union Trust Company being six months' interest on bond No. —

—— ——, *Treasurer.*

This certifies that this bond is one of the series referred to within and is entitled to the benefits of the trust mortgage

THE UNION TRUST COMPANY,
By —— ——, *President.*

And be it further resolved that to secure the payment of the principal and interest of said bonds the president and treasurer are hereby authorized and instructed to make, execute acknowledge and

deliver in the name and behalf of this corporation and under its corporate seal to the Union Trust Company as trustee a first mortgage to bear date April 1st 1886 of all the railroad of this corporation and its branches franchises and property of every kind real and personal now owned or hereafter acquired by it, and be it further resolved that said mortgage deed of trust shall contain such recitals, declarations, provisions, conditions, *conditions*, covenants agreements and stipulations as will in the judgment of the president and treasurer secure to the holders of said bonds the payment of the principal and interest thereof according to the tenor of the same. And be it further resolved that the directors be requested to take such measures and do such
80 acts as they may deem requisite for carrying into effect the purposes aforesaid, and be it further resolved that five hundred of said bonds amounting to five hundred thousand dollars be set apart and issued to Franklin E. Gregory in part payment for the said railroad and property purchased of him and the remainder of said bonds be set apart and appropriated to the purpose of constructing equipping and completing said railroad and for the lawful purposes of said company, now therefore this indenture further witnesseth that the said party of the first part for the purpose of securing the payment of all said bonds with the interest maturing thereon ratably and without preference or priority and according to their tenor and effect and in consideration of the sum of one dollar to it paid by the party of the second part the receipt whereof is hereby acknowledged doth by these presents grant, bargain, sell, alien, assign, transfer, release convey and confirm unto said party of the second part its successors in this trust and assigns all the railroad of the Washington and Potomac Railroad Company beginning at Point Lookout as the confluence of the Potomac river and Chesapeake bay in the county of Saint Mary's in the State of Maryland and running thence to the city of Washington in the District of Columbia, its extensions and appurtenances, and the equipments thereof, consisting of all locomotives and cars belonging to the party of the first part and used thereon and also all the right-, liberties, privileges, immunities and franchises of the said Washington and Potomac Railroad Company and also all the rights of way and land occupied and used in connection with or for the construction, completion and maintenance of said railroad its extensions and branches together with all bridges, culverts side tracks depot grounds, stations, machine shops, buildings and other structures property real and personal and improvements of
81 every kind and description now or hereafter to be made acquired or erected on or connected with the said line of railroad, and all tolls, rents and income to be had or derived from the said railroad and property hereby mortgaged. To have and to hold the above described and granted premises and every part and portion thereof unto the party of the second part, its successors in this trust hereby created and assigns forever in trust, nevertheless

for the benefit, security and protection of the persons, corporations, firms and partnerships who shall hold the bonds and interest coupons afore *and* and for the purpose of enacting the payment thereof and upon and under the several trusts, uses, conditions and covenants hereinafter expressed and declared, concerning the same that is to say

Article first. Until default shall be made in the payment of the interest or principal of said bonds or of something herein required to be done by the party of the first part the said mortgaged premises and every part and portion thereof shall be continue to be and remain in the possession and control and under the management of the party of the first part with a right to the party of the first part to receive and use the tolls, income, rents, issues and profits thereof in the same manner and with the same effect as if this deed had not been made.

Article second. The party of the first part covenants and agrees to and with the party of the second part and its successors in the said trust and to and with each person or corporation who shall or may become or be the holder or holders of any of the said bonds their heirs, executors, administrators and assigns jointly and severally as follows:

First. That the party of the first part shall and will from time to time upon demand of said trustee for the time being grant, convey, confirm, assign and transfer unto the said trustee all real
82 estate which may hereafter be acquired by it and all personal estate, corporate rights and franchises which it shall in any way or manner acquire as appurtenant to or in or for use upon or for the business of the said railroad or its extensions & shall & will make, seal, execute acknowledge and deliver all and every such deed conveyances & assurances in law for the better assuring, conveying and conferring unto the said trustee for the time being all and singular the premises, estates, property hereby conveyed or *ex*tended so to be or which are hereby covenanted & agreed to be hereafter conveyed to said trustee as by said trustee shall be required for the better effectually carrying out the provisions & purposes of this mortgage & securing the payment of the principal and interest of the land hereby secured all of which estates shall be held by the said trustee in under & upon the several and respective trusts and for the uses and purposes and subject to the covenants, conditions, powers & authorities herein mentioned declared given and expressed. And that it shall and may be lawful for the said party of the first part its successors and assigns by and with the consent & approval of the trustee at any time or times hereafter to exchange for other property or to sell any part of the hereby mortgaged estate and premises free and clear from the lieu or incumbrance of these presents & to convey the same without liability on the part of the grantee for the disposition made of the price paid or property received in exchange, provided however that the proceeds of any sale so made shall at the option of the said

party of the first part be invested by them, either in the improvement of any remaining part of the mortgaged premises or in the purchase by the said party of the first part of other property real & personal which property so purchased as also
83 any that may be acquired in exchange as aforesaid by the said party of the first part shall be subject to all the trusts hereby declared (including that of sale or exchange) of the property in this indenture described & shall be conveyed in mortgage by the party of the first part to the said trustee for the time being to be so held.

Second. That the said party of the first part shall and will punctually pay to the holders of the said bonds intended to be hereby secured or that may be issued and accepted in lieu, substitution or renewal of the same the interest thereon semi-annually as the same shall become due and payable according to the terms in said bonds *continued* and in accordance with the provisions of this indenture of mortgage & shall and will on the first day of April, A. D. 1916 or whenever the said principal shall according to the provisions hereof become due and payable fully and entirely pay off and satisfy as aforesaid the whole of said bonds intended to be secured hereby or so much thereof as may then remain due, principal and interest without any further delay.

Third. In case default shall be made in payment of any of the interest coupons hereby secured to be paid and such default shall continue for six months after payment shall have been duly demanded then and thereupon the entire principal sum hereby secured to be paid shall at the election of the said trustee become immediately due and payable anything in said bonds or herein contained to the contrary notwithstanding and this provision is expressly declared not to be in the nature of a penalty for a breach of condition, or for the non-payment of interest but to be a provision which having regard to the nature of the mortgaged premises and of the availability of the security and for other reasons in essentially
84 necessary to carry out the objects and purposes of the parties hereto.

Fourth. In case default shall be made in the payment of any money principal or interest hereby secured to be paid and such default shall continue for six months after payment shall have been duly demanded the party of the first part upon demand of the said trustee shall forthwith surrender to the said trustee the actual possession of and it shall be lawful for the said trustee forthwith to enter upon, and take possession, personally or by its agents or attorney of all and singular the railroads, real estate and other property and the equipment thereof and the appurtenances thereto hereby conveyed or *interest* so to be, together with all the records books and papers of the said party of the first part, and to have, hold, use and manage the same and from time to time to make all needful repairs and replacements and such alterations therein and additions or improvements, thereto as to it shall seem wise and re-

ceive the tolls, rents, income, issues and profits thereof and to sell at public auction or private sale such portion of the personal property hereby mortgaged as it shall deem advantageous and expedient to sell and out of the proceeds of such sales, and of the said rents, tolls, income issues and profits of said property to pay all the proper costs, charges and expenses of so taking holding and managing the same including a reasonable compensation to said trustee its agents, attorneys and counsel and all taxes, assessments and other charges or liens if any prior to the lieu of these presents and to apply the remainder of the money so received by it, 1st. To the payment of the interest coupons hereby secured and which may then be due and outstanding to the lawful holders thereof, *pro rata* and without discrimination priority or -reference, and 2nd to retain the surplus and apply the same to the payment of the interest coupons on said
85 bonds as they shall mature and become due *pro rata* and without discrimination, priority or preference and the remainder, if any, of the net money so secured by it to hold and distribute and apply according to the provisions of this trust hereinafter contained, Fifth. In case default shall be made in the payment of any of said interest coupons when the same shall become payable or of any of said bonds or of any part thereof when the same shall become payable according to the tenor thereof or by election of the trustee as hereinbefore provided or in payment of any tax on the property when required as hereinafter agreed, and such default in any such payments shall continue six months after actual demand therefor shall have been made upon the party of the first part or in case default shall be made by the party of the first part in the performance of any of the conditions covenants or agreements herein contained on its part to be kept or performed and such default shall continue for six months after the time when such condition covenant or agreement should have been performed by said party of the first part according to this indenture and after such performance by it shall have been demanded of it, then and in either of said cases said party of the first part shall be required by the trustee — immediately surrender possession of all and singular the mortgaged premise- and property of every sort or description to said trustee and said trustee may and if requested in writing by one third in amount of the holders of said bonds then outstanding and unpaid, shall after entry as aforesaid or without entry, sell said property in whole or in part or in its discretion different portions thereof at different times at public auction at such place in the said city of Baltimore as said trustee may determine first giving notice of the time and place of
86 any such sale by publishing the same once a week for six successive weeks in at least one newspaper published in the city of Boston, the city of Philadelphia and in the city of Baltimore and to convey the property so sold by a proper and sufficient deed or deeds of conveyance thereof in the name of said trustee or in the name of the Washington and Potomac Railroad Company by said

trustee as its attorney thereto hereby duly authorized to the purchaser or purchasers thereof, in fee simple and absolutely discharged of the trusts. And said trustee and its successors shall have power to adjourn any such sale from time to time in its or their discretion, and successive sales may be made in form and manner aforesaid of any part or parts of said property not disposed of by previous sales. And all such sales and conveyances when made and completed as aforesaid shall be a perpetual bar both in law and equity against the Washington and Potomac Railroad Company its successors and assigns and all persons claiming the premises so sold or any part thereof, by, from, or under them or any of them. And in no case shall the purchaser be held to see to the application of the purchase money, and in case of any default as aforesaid in any of said payment- or in the performance of any of said conditions or of any of said covenants or agreements on the part of the party of the first part contained for six months after demand as aforesaid the said party of the second part or its successors in said trust may and upon request in writing by the holders of one third in amount of all the said bonds then outstanding and unpaid shall foreclose the equity of redemption of the party of the first part, and all persons having any legal or equitable rights against or in or to the mortgaged premises or any part or portion thereof by proceed-
87 ings at law or in equity in any court of competent jurisdiction either of the State of Maryland or of the United States. And the said party of the second part or its successor or successors in said trusts shall pay and apply the proceeds of all sales made by it as aforesaid or made under foreclosure proceedings as aforesaid or made by judicial authority and received by it or them as follows, 1st To the payment of the costs, charges and expenses incurred in and about such sales and proceedings and in the management of the property and in the execution of the trusts and reasonable compensation to said trustee, its agents, attorneys and counsel and all advances made and liabilities incurred by said trustee in the execution of this trust and all taxes, assessments and other charges or liens upon the trust property prior to the lien of these presents 2nd To the payment of the interest coupons hereby secured to be paid and then outstanding due and unpaid *pro rata* without preference or priority. 3rd. To the payment of the principal of the bonds then outstanding and unpaid *pro rata* and without preference or priority, 4th. To account for and pay over the surplus to the party of the first part its successors or assigns, The powers of sale above given and provided are not to be construed as a waiver or in lieu of any other rights or remedies which the trustee might lawfully exercise or employ under or by virtue of this instrument.

Article third. The party of the first part shall at all times keep an office or agency in the city of Baltimore or in the city of Philadelphia for the payment of the principal and interest of said bonds.

Article fourth. It — also expressly understood and agreed that

the said bonds shall stand equally secured by this mortgage though made issued and sold at different times and that no bond
88 shall be deemed to be secured by or issued under this mortgage unless the same is certified in the form hereinbefore set forth endorsed thereon by the party of the second part, it- successors or successor in said trust to have been issued.

Article fifth. The party of the first part shall pay all taxes and assessments upon the premises when the same shall become payable and shall pay to the party of the second part on demand all such sums of money as said party of the second part shall have been advanced in the execution of this trust,

Article sixth. It is expressly understood and agreed that in no case shall the party of the first part avail itself of any redemption, stay valuation appraisement law which has been or may hereafter be enacted and no holder of any bond hereby secured shall have recourse for its payment under any circumstances upon any stockholder of the party of the first part under or in pursuance of any law imposing liability upon stockholders of incorporated companies whether such law be now in force or shall be hereafter enacted all such recourse being hereby expressly waived.

Article seventh. And it is further understood and agreed that the party of the second part and its successprs in said trust may appoint and employ at the expense of said trust estate all such persons, counsellors, clerks, book keepers, engineers and other agents as may be reasonably necessary in the execution of the trust hereby created and shall not be answerable for the misconduct or neglect of such persons, counsellors, clerks, book keepers, engineers or other agents, unless chargeable with culpable negligence in their selection

Article eight. It is further expressly agreed that the party of the second part shall be responsible only for gross negligence or wilful default, that it shall not be required to act in execution of the trusts hereby *credited* except at its own option unless requested so
89 to do as hereinbefore provided and unless reasonable indemnity be furnished against the loss trouble and expense it may be put to in so doing that it shall have power to submit all controversies arising under this instrument to arbitration and that in case it is required to take measures for the enforcement of this mortgage the reasonable expense of such measures shall be paid out of the trust estate in preference to all other charges, and the party of the second part hereby accepts the trusts aforesaid and agrees to execute them upon the terms, agreements and provisions herein contained, and it is further agreed that the word "trustee" whenever mentioned in this instrument shall apply to the party of the second part or any other trustee succeeding or subsequent to it in said trust and shall be held and construed to mean the trustee -- trustees for the time being.

Article ninth. In case the trustee herein appointed or any further trustee shall at any time desire to be discharged from or decline *to*

become incapable or for any reason unfit to act in the trusts of these presents or in any case for any cause said trusteeship shall become vacant then and in every such case and so often as the same shall happen any judge of the court of appeals or judicial court of Maryland or any judge of the circuit court of the United States upon the application of the holders of one third in amount of said bonds then outstanding and unpaid may appoint a new trustee or trustees in its, or his, or their place, and so often as any new trustee or trustees hereof shall be appointed either in the manner above provided or if any other lawful manner all the estate, property, rights, and powers which shall for the time being be held upon the trusts hereof, shall thereupon be vested in the new trustee or trustees.

Article tenth. The party of the first part further covenants
90 and agrees to cause this mortgage and deed of trust to be recorded as a mortgage or real and personal estate as may be required by the laws of the State of Maryland or of the United States in which the said property is situate so as to preserve and protect the lien thereof.

Article eleventh. If the party of the first part shall well and truly pay the sums of money herein required to be paid by the party of the first part including the principal and interest of the said bonds at the time in the manner herein specified and shall well and truly keep and perform all the things herein required to be kept and performed by the party of the first part according to the true intent and meaning of these presents, then and in that case all the estate, right title and interest of the party of the second part or its successors in the trust hereby created shall cease, determine and become void, and the property and title hereby conveyed shall revert to and revest in the party of the first part without any acknowledgment of satisfaction reconveyance re-entry or other act Nevertheless the party of the second part, or its successors in said trust, shall enter of record wherever this instrument shall have been filed or recorded on or among the public records a complete satisfaction thereof within ninety days after such satisfaction shall have been made and completed. And the party of the second part or its successors in said trust shall thereupon surrender and deliver to the party of the first part all and singular the premises hereby conveyed or any part or parcel thereof that may then be in its possession or in the possession of its successors by virtue hereof and until these presents shall cease, determine and become void as aforesaid the same shall remain in full force, effect and virtue in the law.

91 In witness whereof the said Washington and Potomac Railroad Company the party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by its president and treasurer and the party of the second part, in testimony of its acceptance of said trust has also

hereunto set its corporate name and seal by its president the day and year first above written.

WASHINGTON AND POTOMAC
RAILROAD COMPANY,
By ROYAL M. PULSIFER, *President.*
[CORPORATE SEAL.] JAS. LONG, *Treasurer.*
THE UNION TRUST COMPANY,
By JAS. LONG, *President.*

Attest: M. S. STOKES, *Sec'y.*

Signed, sealed and acknowledged in presence of us—

A. M. ZANE.
D. R. PATTERSON.

COMMONWEALTH OF MASSACHUSETTS, *County of Suffolk,* } *To wit:*

I, Lawrence Bond a notary public duly appointed, qualified and acting in and for the county aforesaid do hereby certify that Royal M. Pulsifer president of the Washington and Potomac Railroad Company a party to a certain deed bearing date on the first day of April in the year 1886 and hereto annexed personally appeared before me this day at Boston in the county aforesaid, the said Royal M. Pulsifer being personally well known to me as the person who executed said deed in the name and behalf of said company and acknowledged the same to be the act and deed of said company.

Given under my hand and seal at said Boston this nineteenth day of May, A. D. 1886.

LAWRENCE BOND,
[NOTARIAL SEAL.] *Notary Public.*

92 COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

I, Jos. A. Willard of Boston in said county, duly elected, qualified and sworn as clerk of the superior court, for and within said county and Commonwealth, dwelling in Boston in said county said court being a court of record with a seal which is hereto affixed the records and seal of which court I have the custody do herein and hereby, in the performance of my duty as said clerk, certify and attest that Lawrence Bond before whom the annexed affidavit proof or acknowledgment was taken or subscribed is a notary public for and within said county duly appointed commissioned, qualified, sworn and authorized by the laws of said Commonwealth to act as such, and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs and acknowledgments of deeds of conveyances for lands, tenements and hereditaments lying and

being in said Commonwealth, that he was at the time of taking the affidavit proof, or acknowledgment hereto annexed such notary public that due faith and credit are and ought to be given to his official acts, that I am well acquainted with his signature and handwriting and I verily believe that the signature to the said affidavit, proof or acknowledgment is genuine and further that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

Witness my hand and the seal of said court, at Boston in said *company* and Commonwealth this 19th. day of May, A. D. 1886.

[COURT SEAL.] JOS. A. WILLARD, *Clerk.*

93 COMMONWEALTH OF PENNSYLVANIA, } *To wit:*
County of Philadelphia, }

I, George W. Bryand a notary public duly appointed, qualified and acting in and for the county aforesaid, do hereby certify that James Long, treasurer of the Washington and Potomac Railroad Company a party to a certain deed bearing date on the first day of April in the year 1886 and hereto annexed, personally appeared before me this day at Philadelphia in the county aforesaid the said James Long being personally well known to me as the person who executed the said deed in the name and behalf of said company and acknowledged the same to be the act and deed of said corporation.

Given under my hand and seal at said Philadelphia this first day of June, A. D. 1886.

GEO. W. BRYANT,
Notary Public. [NOTARIAL SEAL.]

STATE OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

I, William B. Mann prothonotary of the courts of common pleas of said county, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate that Geo. W. Byrant Esquire whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written was at the time of such acknowledgment a notary public for the Commonwealth of Pennsylvania, residing in the county aforesaid duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands and tenaments in said State of Pennsylvania and
94 to all whose acts, as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere said courts being courts of record having a common seal, and that I am well acquainted with the handwriting of the said notary public and verily believe his signature thereto is genuine, and I further

certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennslyvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 1st day of June in the year of our Lord one thousand eight hundred and eighty six.

WILLIAM B. MANN,
Prothonotary.

[COURT SEAL.]

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber — fol. — *et seq.*, one of the land records of the District of Columbia.

9. Plaintiff also gave in evidence a certified copy of the certificate of incorporation of the Washington, Potomac and Chesapeake Railroad Company in the words and figures following, to-wit:

95 *Certificate of Incorporation.*

Whereas, under and by virtue of a decree of the circuit court of the United States for the district of Maryland bearing date the 22nd day of May, 1900, in a cause pending therein, in which The Union Trust Company of the City of Philadelphia is complainant, and The Washington & Potomac Railroad Company, a corporation duly formed and organized under the laws of the State of Maryland, is defendant, for the foreclosure of a mortgage or deed of trust executed on the 1st day of April 1886 by the said The Washington & Potomac Railroad Company to the said The Union Trust Company of Philadelphia, the railroad, franchises and all the property and rights of every description of the said The Washington & Potomac Railroad Company were decreed to be sold by the said The Union Trust Company of Philadelphia, trustee, at a time and place and upon the terms specified and directed in said decree.

And whereas, afterwards, the said The Union Trust Company of Philadelphia, trustee, after complying with all the terms and provisions of said decree, did, on the 18th day of July in the year 1900, sell the said railroad, its franchises, appurtenances, rights of way and property of every description and character to Franklin E. Gregory, J. Otis Wetherbee, Edward J. Brown and Talmadge A. Lambert.

And whereas, the said sale so made by the said The Union Trust Company of Philadelphia, trustee, was duly reported by it to the said circuit court of the United States for the district of Mary-
96 land and the said sale was finally ratified and confirmed by a decretal order passed by said court bearing date the 8th day of June in the year 1901.

And whereas, for full consideration and in pursuance of a decretal

order of said circuit court of the United States passed in said cause, Henry W. Watson of the city of Philadelphia has acquired by good and sufficient transfer all the right, title, interest and estate of every description of all of said purchasers in and to said railroad property, its rights, privileges, appurtenances and franchises.

And whereas, the said Henry W. Watson, purchaser as aforesaid, has associated with himself William Shippen Roney of the city of Philadelphia and State of Pennsylvania, John Prentiss Poe, S. Johnson Poe, and Edgar Allen Poe of the city of Baltimore, State of Maryland, as incorporators, for the purpose of forming a railroad corporation under and in accordance with the provisions of section 187 to section 193, both inclusive, of article 23 of the Code of Public General Laws of Maryland, title "Corporations" subtitle "Railroad Companies" with the further purpose by the acquisition of said company so to be formed and organized of the said railroad, its franchises, appurtenances, rights and property so purchased by said Franklin E. Gregory, J. Otis Wetherbee, Edward J. Brown and Talmad-e A. Lambert and so sold to said Henry W. Watson for the purpose of completing the said railroad and its branches and the equipment and operation thereof.

97 Now this certificate of incorporation witnesseth, that the said Henry W. Watson and his associates William Shippen Roney, citizens of the State of Pennsylvania, and his associates John Prentiss Poe, S. Johnson Poe and Edgar Allen Poe, citizens of the State of Maryland, do now and hereby pursuant to the above provisions of the Code of Public General Laws of the State of Maryland, organized themelves and their successors into a body corporate with all the rights and privileges and subject to all the restrictions conferred and imposed in and by the said provisions of law, and we do hereby specifically certify as follows, to-wit:

First. The corporate name of the corporation hereby formed and organized shall be the Washington Potomac & Chesapeake Railroad Company.

Second. The object of said corporation is to acquire all the franchises, rights of way, and privileges of said Washington & Potomac Railroad Company and its railroad and all and singular the appurtenances belonging thereto, and all and singular its real and personal property, and to own, possess, complete, equip, maintain and operate said railroad beginning at Point Lookout at the confluence of the Potomac river and Chesapeake bay in the county of St. Mary's in the State of Maryland, and running thence through the counties of St. Mary's, Charles and Prince George to the city of Washington in the District of Columbia, with such branch lines of railroad and extensions and such terminal and intermediate facilities as said corporation under the authority and power conferred in and by the provisions of the Code of Public Laws of Maryland may or shall see fit to build and operate.

98 Third. The capital stock of said corporation shall be four millions of dollars ($4,000,000) divided into forty thousand

(40,000) shares of the par value of one hundred ($100) dollars each. the whole of which stock is to be issued as fully paid up stock. Sixteen hundred and thirty shares (1630) amounting to one hundred and sixty-three thousand dollars ($163,000) to the State of Maryland and the remainder in part payment for the road, franchises and property to be purchased and acquired by said corporation.

Fourth. The directors to manage the affairs of said corporation shall be nine (9) in number at the outset, which number, at the desire and election of the stockholders of said corporation as may be manifested and exercised at an annual meeting of said corporation, or at any special meeting thereof called for such purpose, may be increased to any number not exceeding eleven (11) in all, or may be decreased to any number not less than seven (7).

Fifth. The directors of said corporation for the first year are to be as follows: Henry W. Watson, William Shippen Roney, John Prentiss Poe, S. Johnson Poe, Edgar Allen Poe, Paul O. Kirschmann, William J. Yorke, Reed Wills and J. Frank Smith.

Sixth. The board of directors herein named, at their first meeting, shall elect a president, a vice-president, a treasurer and secretary of said corporation and, if desired, also an assistant treasurer and an assistant secretary. They shall also appoint from their number an executive committee. They shall also establish places
99 and offices in which the corporate and directors' meetings of said corporation may be held and they shall also adopt by-laws and provide and adopt a suitable corporate seal for said corporation.

In testimony whereof, the above named incorporators have hereunto affixed their signatures and seals on this 24th day of July in the year nineteen hundred and one.

HENRY W. WATSON. [SEAL.]
WILLIAM SHIPPEN RONEY. [SEAL.]

Witnessed by: as to H. W. Watson & W. S. Roney:

PAUL O. KIRSCHMANN.
W. C. WEEG.

JOHN PRENTISS POE. [SEAL.]
S. JOHNSON POE. [SEAL.]
EDGAR ALLEN POE. [SEAL.]

Witness as to John Prentiss Poe, S. Johnson Poe and Edgar Allen Poe:

ABRAHAM H. FISHER.

STATE OF PENNSYLVANIA, } *To wit:*
City and County of Philadelphia, }

I hereby certify that on this 13th day of July in the year 1901, before me, the subscriber a notary public duly commissioned and qualified and residing in said city and county, personally appeared Henry W. Watson and William Shippen Roney and acknowledged the aforegoing certificate of incorporation to be their respective act.

Witness my hand and official seal this 13th day of July, 1901.

PAUL O. KIRSCHMANN,
Notary Public.

[NOTARIAL SEAL.]

Commission expires January 15th, 1905.

100 STATE OF MARYLAND, } *To-wit:*
City of Baltimore, }

I hereby certify that on this 24th day of July 1901 before the subscriber, a justice of the peace of said *said* State in and for said city, personlly appeared John Prentiss Poe, S. Johnson Poe, and Edgar Allen Poe and each acknowledged the aforegoing certificate of incorporation to be their respective act.

ABRAHAM H. FISHER, *J. P.*

I, George C. Merrick, associate judge of the seventh judicial circuit, do hereby certify that I have examined the aforegoing certificate of incorporation of the Washington, Potomac & Chesapeake Railroad Company and I do further certify and determine that the said certificate is in conformity with the law.

GEORGE C. MERRICK, *A. J.*

STATE DEPARTMENT, ANNAPOLIS, MD.

Filed for record on the 27th day of July, 1901, at 9 o'clock a. m., and same day recorded in Record Book of Railroad Corporations # 2, folio 235, &c.

WILFRED BATEMAN,
Secretary of State.

101 THE STATE OF MARYLAND,
OFFICE OF THE SECRETARY OF STATE.

I, Wilfred Bateman, secretary of state, of the State of Maryland do hereby certify that the foregoing is a true and correct copy of the certificate of incorporation of the Washington, Potomac and Chesapeake Railroad Company, as the same appears of record in the office of the secretary of state.

In testimony whereof, I have hereunto set my hand and, by order of the governor, attested by his signature, have affixed the [SEAL.] great seal of the State of Maryland, this 20th day of October one thousand nine hundred and three.

JOHN WALTER SMITH.

By the governor:

WILFRED BATEMAN,
Secretary of State.

(Copy.)
C

102 10. Plaintiff also offered in evidence a deed dated July 25, 1901, from Union Trust Company of Philadelphia to Washington, Potomac and Chesapeake Railroad Company and the same, notwithstanding defendant's objection thereto on the ground that it was not accompanied by a copy of the proceedings in the circuit court of the United States for the district of Maryland therein referred to, was admitted in evidence by the court to which ruling defendant then and there excepted, said deed being in the words and figures following, to-wit:

Liber 2561, folio 430 *et seq.*

$48.75 int. rev. stamps affixed.

Union Trust Co. of Phila., Tr's, *et al.* to Washington, Potomac and Chesapeake R. R. Co. } Deed. Recorded Sept. 21st, 1901, 9–14 a. m.

This deed, made this 25th day of July, in the year nineteen hundred and one, by the Union Trust Company of Philadelphia, trustee, as hereinafter mentioned, of the first part: Franklin E. Gregory, of Framingham in the Commonwealth of Massachusetts, Edward J. Brown and Mary E. Brown, his wife, of the city of Boston and Commonwealth of Massachusetts, and Tallmadge A. Lambert and Avarilla Lambert his wife, of the city of Washington in the District of Columbia of the second part; Henry W. Watson and Annie M. V. Watson, his wife of the city of New York and State of New York of the third part; and the Washington, Potomac and Chesapeake Railroad Company, a corporation duly incorporated under the laws of the State of Maryland of the fourth part; whereas, by a decree of the circuit court of the United States for the district of Maryland bearing date
103 the 22nd day of May, 1900, and passed in a case therein pending, wherein the said The Union Trust Company of Philadelphia, trustee was complainant and The Washington and

Potomac Railroad Company was defendant, the above named The Union Trust Company of Philadelphia, trustee, was appointed trustee with authority and power to sell the property in said proceedings mentioned, the same being the Washington and Potomac railroad and its equipments and appurtenances together with the franchises of the said Washington and Potomac Railroad Company, as by reference to the proceedings in said cause will more fully appear; and whereas, after having given bond, as required in said decree, and having complied with all the other requisites of said decree, and having given due notice of the time, place and terms of sale by advertisements duly published, as in said decree provided, the said The Union Trust Company of Philadelphia, trustee, did on the 18th day of July, in the year 1900, at the town of Upper Marlboro, in Prince George's county, Maryland, sell the property decreeto be sold by the decree in said cause, and hereinafter more fully described, to the said Franklin E. Gregory, Edward J. Brown and Tallmadge A. Lambert, together with J. Otis Wetherbee now deceased, at and for the price of one hundred thousand dollars ($100,000); and whereas, the said sale so made was duly reported to said circuit court of the United States for the district of Maryland and was finally ratified and confirmed by the decretal order of said court, bearing date the 8th day of June, 1901; and whereas, the whole of the purchase money according to the terms of said decree and said sale has been fully satisfied and paid to the said The Union Trust Company of Philadelphia, trustee; and whereas,
104 the said purchase was made by said Franklin E. Gregory, Edward J. Brown, Tallmadge A. Lambert and J. Otis Wetherbee not for their individual benefit and account, but as a committee representing the bondholders of said Washington and Potomac Railroad Company; and whereas, since the final ratification of said sale on the 18th day of June 1901, said J. Otis Wetherbee, one of said committee and as such one of said purchasers, has departed this life, whereby the benefit of such purchase has devolved upon said Gregory, Brown and Lambert as the surviving members of said committee; and whereas, by a decretal order of the circuit court of the United States for the district of Maryland duly passed in said case and dated the 8th day of July 1901, the said The Union Trust Company of the City of Philadelphia, trustee, party hereto of the first part, has been authorized and directed to convey to said Franklin E. Gregory, Edward J. Brown and Tallmad-e A. Lambert, as the surviving members of said committee and the survivors of said J. Otis Wetherbee, one of the reported purchasers, the property so sold by it as such trustee; and whereas the said Franklin E. Gregory, Edward J. Brown and Tallmadge A. Lambert, as such surviving purchasers and committee, have sold all their right, title, interest, and estate of every description acquired by them at said sale, and all the right, title, interest and estate of said bondholders represented by them to said Henry W. Watson, the party hereto of the third part, as, by uniting herein, they do hereby declare; and whereas,

the said Henry W. Watson has sold all his right, title, interest and estate in and to said property, so acquired by him from said Franklin E. Gregory, Edward J. Brown and Tallmadge A. Lambert to the said Washington, Potomac and Chesapeake Railroad Company,
105 party hereto of the fourth part, as by uniting herein he doth hereby declare: Now this deed witnesseth, that in consideration of the premises and of the sum of ten dollars, the receipt whereof, is hereby acknowledged the said The Union Trust Company of Philadelphia, trustee, party of the first part, the said Franklin E. Gregory, the said Edward J. Brown and Mary E. Brown, his wife, and the said Tallmadge A. Lambert and Avarilla Lambert, his wife, parties hereto of the second part, and the said Henry W. Watson and Annie M. V. Watson, his wife, parties hereto of the third part, do severally grant to the said Washington, Potomac and Chesapeake Railroad Company, party hereto of the fourth part, all the railroad of the said Washington and Potomac Railroad Company, beginning at Point Lookout at the confluence of the Potomac river and the Chesapeake bay in St. Mary's county in the State of Maryland, and running thence through a part of St. Mary's county, Charles county and Prince George's county, Maryland, to the city of Washington in the District of Columbia, and its extensions and appurtenances, with the equipments thereof, consisting of all its personal property and effects of every kind, and also all the rights, liberties, privileges, immunities and franchises of the said Washington and Potomac Railroad Company and also all the rights of way and land used in connection with, or for the construction, use and maintenance of said railroad, its extensions and branches, together with all the bridges, culverts, sidetracks, depots, grounds machine-shops, buildings and other structures, property, real and personal, and improvements of every kind and description acquired, or erected on or connected with the said line of railroad, and all tolls, rents and income belonging or
106 due to said railroad company; to have and to hold the above described property, rights, privileges, franchises and appurtenances of every description to the said The Washington *and* Potomac — Chesapeake Railroad Company, its successors and assigns, and the said parties hereto, of the second and third parts do hereby covenant that they will warrant specially the property hereby conveyed, against encumbrances made by them and none other, and the said parties of the first, second and third parts hereby covenant that they will execute such further assurances as may be requisite. And the said, The Union Trust Company of Philadelphia, trustee, doth hereby constitute and appoint John Stokes Adams of the city of Philadelphia its true and lawful attorney, in its name and on its behalf to acknowledge this deed as and for its act and deed.

Witness the signature of Clarence L. Harper, the president of the said The Union Trust Company of Philadelphia, trustee, and the corporate seal of the said company, this twenty-fourth day of July, 1901. Witness also the hands and seals of said Franklin E. Gregory, Ed-

ward J. Brown and Mary E. Brown his wife, and Tallmadge A. Lambert and Avarilla Lambert his wife, and Henry W. Watson and Annie M. V. Watson, his wife, this 25th day of July 1901.

[CORPORATE SEAL.]

LENA M. STEVENS, to

FRANKLIN E. GREGORY. [SEAL.]
MAUD KNOX, to EDWARD J. BROWN. [SEAL.]
E. J. BROWN & MARY E. BROWN. [SEAL.]
MARY E. BROWN &
F. E. GREGORY.

TALLMADGE A. LAMBERT. [SEAL.]
AVARILLA LAMBERT. [SEAL.]

G. A. FRALEY,
Witness as to signatures of Tallmadge A. & Avarilla Lambert.

THE UNION TRUST CO.
CLARENCE L. HARPER, [SEAL.]
President.

HENRY W. WATSON. [SEAL.]
ANNIE M. V. WATSON. [SEAL.]

JOSEPH C. MURPHY.
P. M. MINSTER.

107 STATE OF PENNSYLVANIA, } *To wit:*
City of Philadelphia, }

I hereby certify, that on this twenty-fourth day of July, in the year nineteen hundred and one, before the subscriber, a notary public duly commissioned and qualified and residing in the city of Philadelphia, State of Pennsylvania personally appeared John Stokes Adams, the attorney of the Union Trust Company of Philadelphia, trustee, duly constituted and appointed in said deed to acknowledge the same in the name of and on behalf of said company, and doth acknowledge the said deed as and for the act and deed of said company.

Witness my hand and official seal this twenty-fourth day of July 1901.

JOSEPH C. MURPHEY,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires January 14th, 1905.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I, M. Russell Thayer, prothonotary of the county of Philadelphia, and clerk of the courts of common pleas of said county which are courts of record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania, to make the following certificate, do certify that Joseph C. Murphey, Esquire whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a notary public, for the Commonwealth of Pennsylvania, residing in the county aforesaid, duly commissioned
108 and qualified to administer oaths and affirmations and to take acknowledgment and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania and to all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; and that I am well, acquainted with the handwriting of the said notary public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania, in testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 12th day of Sept. in the year of, our Lord one thousand nine hundred and one.

M. RUSSELL THAYER,
[SEAL.] *Prothonotary.*

COMMONWEALTH OF MASSACHUSETTS, } *To wit:*
City of Boston, }

I, hereby certify that on this eleventh day of July, 1901, before the subscriber, a notary public duly commissioned and qualified and residing in said city of Boston, personally appeared Franklin E. Gregory, Edward J. Brown and Mary E. Brown his wife, and severally acknowledged the aforegoing deed to be their respective act and deed. Witness my hand and official seal this 11th day of July, 1901.

CHARLES K. COBB,
[NOTARIAL SEAL.] *Notary Public.*

109 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

CLERK' OFFICE OF SUPERIOR COURT.

I, Jos. A. Willard of Boston, in said county, duly elected, qualified and sworn as clerk of the superior court, for and within said county and Commonwealth, dwelling in Boston in said county, said court being a court of record with a seal which is hereto affixed, the

records and seal of which court I have the custody, do herein and hereby, in the performance of my duty as said clerk, certify and attest that Charles K. Cobb, before whom the annexed affidavit proof or acknowledgment was taken and subscribed, is a notary public for, within, and including the whole of said Commonwealth, and has authority to execute and take affidavits, proofs and acknowledgments in all the counties in said Commonwealth, duly appointed, commissioned, qualified, sworn and authorized by the laws of said Commonwealth to act as such; and also duly authorized by the laws of said Commonwealth to take affidavits and certify proofs of acknowledgments of deeds of conveyances for lands, tenements, hereditaments, lying and being in said Commonwealth, in any part thereof and to be recorded therein, wherever situated and however bounded, that he was at the time of taking the affidavit, proof or acknowledgment, hereto annexed, such notary public, that due faith and credit are and ought to be given to his official acts; that I am well acquainted with his signature and handwriting, and I verily believe that the signature to the said affidavit, proof or acknowledgment is genuine, and further, that the annexed instrument is executed and acknowledged according to the laws of said Commonwealth.

110 Witness my hand and the seal of said court at Boston, in said county and Commonwealth, this 16th day of September, A. D. 1901.

[NOTARIAL SEAL.] JOS. A. WILLARD, *Clerk.*

STATE OF MARYLAND, *Garrett County,* } *To wit:*

I, hereby certify that on this 18th day of July, 1901, before the subscriber, a notary public for said county and State aforesaid duly commissioned and qualified and residing in said county of Garrett, personally appeared Tallmadge A. Lambert and Avarilla Lambert, his wife, and severally acknowledged the aforesaid deed to be their respective act and deed.

Witness my hand and official seal this eighteenth day of July, 1901.

G. A. FRALEY,
Notary Public.

[NOTARIAL SEAL.]

STATE OF MARYLAND, *Garrett County,* } *To wit:*

I, E. Z. Tower, clerk of the circuit court for Garrett county being a court of law and of record, do hereby certify that G. A. Fraley, Esquire, before whom the aforegoing acknowledgments were made and who has thereto subscribed his name, was at the time of so doing a notary public in and for the county and State aforesaid, duly

appointed, commissioned and qualified and authorized by law to administer oaths and take acknowledgments.

In testimony whereof I hereunto set my hand and affix the seal of the said circuit court for said Garrett county, this 19th day
111 of September, A. D. 1901.

[COURT SEAL.] E. Z. TOWER, *Clerk.*

STATE OF PENNSYLVANIA, *and County of Bucks,* } *To wit:*

I hereby certify that on this twenty-fifth day of July, 1901, before the subscriber, a notary public, duly commissioned and qualified and residing in said Bucks, Pa. personally appeared Henry W. Watson and Annie M. V. Watson, his wife, and severally acknowledged the aforegoing deed to be their respective act and deed.

Witness my hand and official seal this 25th day of July, 1901.

[NOTARIAL SEAL.] P. M. MINSTER,
Notary Public.

My commission expires Jan. 20th, 1903.

STATE OF PENNSYLVANIA, *County of Bucks,* } *ss:*

I, John G. King, prothonotary of the county of Bucks and State of Pennsylvania, and also clerk of the court of common pleas, the same being a court of record of the aforesaid county, having by law a seal, do hereby certify that Pemberton M. Minster by whom the foregoing acknowledgment was taken and whose name is subscribed thereto, was at the time of taking the same a notary public residing in the said county duly commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing to be recorded in said State,
112 and that I am well acquainted with his handwriting and verily believe that the signature to the foregoing certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed my official seal, which is the seal of said court, this thirteenth day of September, A. D. 1901.

[COURT SEAL.] JOHN G. KING,
Prothonotary.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, ——— —, ———.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber — fol. — *et seq.*, one of the land records of the District of Columbia.

——— ———.

Each of the papers embraced in paragraphs numbered 1, 2, 4, 5, 6, 7, 8, 9 and 10, inclusive of this bill of exceptions was offered by the plaintiff and admitted in evidence by the court in connection with each and every of the counts in plaintiff's declaration and each of the papers embraced in paragraph numbered 3 of this bill of exceptions was offered by the plaintiff and admitted in evidence by the court in connection with the specific count of said declaration to which it appropriately belongs.

To the rulings of the court in admitting each and all of said papers, notwithstanding the objections of the defendant duly interposed, exceptions were duly noted on the ground that said papers were not sufficiently identified with the lands sought to be recovered in this cause, and on the further ground that the defendant was not to be bound by the recitals of facts therein contained.

113 11. Thereupon the plaintiff further introduced witnesses who testified as follows:

MELVIN C. HAZEN, testified that he was now and for thirteen years last past had been in the employ of the engineering department of the District of Columbia; for the past four or five years he had been employed in the surface department of said engineering department; that department makes surveys and plats; he knew the old Southern Maryland Railroad tracks out there near Burrville and Deanwood and had known them the entire time he had been in the District service, thirteen years, making surveys along in that part of the District and he had passed over them a great many times; from Burrville to the northern District line ties and rails were down a good many years ago along the *time* of the old Southern Maryland; he had surveyed most of the property in that section of the District and had laid out public streets out there some of which converged near Chesapeake Junction; they are paper streets; he knew what this case was about; at Mr. Poe's request he had surveyed the line of the old Southern Maryland and made a plat of the same; if shown that plat he would be able to identify it; plat here shown to witness in presence of the jury and identified by him; (indicating on plat) the Southern Maryland comes in there; the lines outside of the middle lines are sidings they are within the right of way; it is a sixty-six foot right of way.

Q. Who is using that at the present time? A. The Chesapeake Beach Railway Company.

Q. The defendant in this case? A. Yes sir.

114 Answering a question by Mr. Flannery, the witness said that the plat to which he was referring was made on the 22nd of February, 1903; when he surveyed the ground he found an established railroad already there, the same being the Chesapeake Beach railway; he had marked the confines of each of the several parcels on the plat; he had just marked the outside boundaries of each parcel, and then the railroad passing through each tract;

By the COURT:

Q. You surveyed these from the deeds? A. I surveyed it more, your honor, from the holdings, The tracks were there when I made this survey. The deed is not definite enough to place it on the ground.

Q. And you got your data from the ground itself? A. Yes, sir.

Q. And what is on the ground? A. Yes, sir.

The WITNESS: The plats recorded with the deeds to the Southern Maryland Railroad Company, and this plat (indicating plat prepared by witness) are as near identical as it is possible to make them.

The outside boundaries of the tracks are given and they correspond. The degree of the curve, etc., is not given in the deeds, therefore, it will be impossible to establish them absolutely. The plats accompanying the deeds and the plat made by the witness showing the curves are similar; they are identical as near as it is possible to identify. The present tracks of the Chesapeake Beach Railway Company and the track of the Southern Maryland Railroad Company, as shown by the plat, are as identical as possible to
115 make them; they have the same curves and *and* have the same tangents; they leave the property at the same point and they enter it at the same point; at the time he made the plat he saw trains of the Chesapeake Beach Railway Company using this road-bed and had seen them many times before and since; they were upon the actual line of the road-bed of the Southern Maryland railroad as conveyed by the deeds running to that company; he first saw trains of the Chesapeake Railway Company running over these tracks which he designated as the Southern Maryland railroad about three or four years ago.

RETURN JONATHAN MEIGS 3RD. testified that he was a surveyor, and had been such for the past twenty-five years; that in 1879 or 1880 he was employed as a surveyor in laying out the right of way and road bed for the Southern Maryland Railroad Company; that he was again employed in that work in 1886; that he remembers the line of this right of way and that he has seen the same within a week. About the year 1898 said witness was employed by the Chesapeake Beach Railway Company on some engineering work upon this same right of way; the work at that time undertaken commenced on what was known as the Southern Maryland railroad and ran as far as what was known as Chesapeake Beach Junction, which is on the boundary line of the District of Columbia. Said witness further testified that the right of way of the old Southern Maryland railroad was sixty-six feet wide, and that according to the recollection of said witness the Chesapeake Beach railway uses the right of way of the old Southern Maryland railroad clear to the District of Columbia line; that within the District the old
116 line was straightened somewhat but in the opinion of the witness not to such an extent as to leave the right of way of

the Southern Maryland; the railroad now, as heretofore, consists of a single track, that the Chesapeake Beach railway put in a switch connecting said right of way with the Shepherds Point branch of the Baltimore & Ohio railroad, there being no connection between said Baltimore & Ohio railroad and the Southern railroad prior to that time.

Thereupon the plaintiff having rested, the defendant moved the court to instruct the jury upon the foregoing evidence which was all the evidence given on the trial of the case, to return a verdict for the defendant, which motion was overruled by the court and an exception to such ruling of the court was duly taken by the attorneys for defendant and noted on the minutes of the trial justice.

And thereupon the defendant having declined to introduce any evidence the plaintiff prayed the court to instruct the jury as follows:

"The jury is instructed that if you believe from the evidence that the plaintiff derives its title to the land in controversy as the successor in title to the Southern Maryland Railroad Company and that said Southern Maryland Railroad Company entered into said land, at or about the time of execution and delivery of the various deeds to it, and exercised acts of dominion over the same, and that the defendant entered upon said property and took possession thereof prior to the bringing of this suit, then your verdict should be for the plaintiff"

which instruction notwithstanding the protest and objection of the defendant was granted, to the granting of which instruction the defendant duly excepted and the same was noted by the trial justice.

117 And thereupon the court orally charged and instructed the jury as follows:

"GENTLEMEN OF THE JURY: This case, notwithstanding Mr. Poe's statement made to you in opening, that I would have to decide it, is one that I am going to leave to you to decide. It seems to me to depend on a question of fact, as to whether or not the Southern Maryland Railroad Company, mentioned here, and whose charter has been introduced in evidence, actually went into possession of that ground and whether or not their title has passed to the plaintiff in this case, through those various deeds, and whether or not the defendant is in the actual possession of the property at this time.

As to the defendant's right of possession, nothing of course, is shown in this case; but the fact that the defendant is in possession has been testified to by one or two witnesses in the case, so that you will have no difficulty on that point.

The only question is whether or not this plaintiff as the successor of the Southern Maryland Railroad Company, now has the title to this right of way which has been described, and whether the

Southern Maryland Railroad Company, the corporation whose charter has been introduced in evidence here, had possession of that property, and the right of possession followed by reason of the conveyances that have been introduced in evidence, so that the plaintiff succeeded to that title, with that right of possession.

It may look like it was a useless thing to submit this question to you, but there is one question of fact that is contradicted, as counsel for the defendant claim.

118 They say there is no evidence here to show that the Southern Maryland railroad ever went into possession of this ground under its charter. That question must depend upon your valuation of the testimony introduced here.

Whether or not the testimony of those witnesses is sufficient to establish that fact, and whether that testimony is properly to be believed by you, under all the circumstances of the case, it is a question of fact which is submitted to you.

A prayer has been prepared and asked for by counsel for the plaintiff which the court has granted, in this language:

'The jury is instructed that if you believe from the evidence that the plaintiff derives its title to the land in controversy as the successor in title to the Southern Maryland Railroad Company and that said Southern Maryland Railroad Company entered into said land, at or about the time of the execution and delivery of the various deeds to it and exercised acts of dominion over the same, and that the defendant entered upon said property and took possession thereof prior to the bringing of this suit, then your verdict should be for the plaintiff.'

Mr. McKENNEY: Should not that be modified by inserting the word 'lawful?'

The COURT: No; it is hardly necessary to insert that in the instruction, because it seems to me that if the other portion of this instruction is correct, and if they find that the title has succeeded to these parties, and is in the plaintiff, it would preclude the presumption that you entered under a deed from the Southern Maryland Railroad Company. So that, in my present view of the law, I think this states the case as well as I can put it in words.

You can take the case.

119 Thereupon the defendant before the jury retired to consider of their verdict, excepted to so much of the said charge as instructed the jury that the decision of the case depended upon the "question of fact as to whether or not the Southern Maryland Railroad Company mentioned here, and whose charter has been introduced in evidence actually went into possession of the ground in controversy and whether or not its title had passed to the plaintiff in the case through those various deeds, and whether or not the defendant is in actual possession of the property at this time," and also to so much of said charge as instructed the jury that "the only question is whether or not this plaintiff as the successor of the

Southern Maryland Railroad Company now has the title to this right of way which has been described, and whether the Southern Maryland Railroad Company, the corporation whose charter has been introduced in evidence here, had possession of that property, and the right of possession followed by reason of the conveyances that have been introduced in evidence so that the plaintiff succeeded to that title, with that right of possession" upon the grounds following:

1. That plaintiff had not shown title to or possession of the lands covered by the deeds to the Southern Maryland Railroad Company lettered from "A" to "I," inclusive to have been in the several grantors named in said deeds nor in any of them.

2. That plaintiff had failed to show continued possession of said lands by said The Southern Maryland Railroad Company or its grantees or legal successors in interest from or about the dates of said respective deeds to the time of the alleged ouster by

120 defendant.

3. Plaintiff had wholly failed to show that either it or its immediate grantors had ever been in possession of the property in controversy or that any ouster of plaintiff or its said grantors by defendant or others had ever in fact occurred.

4. That plaintiff had in and by various counts of its declaration filed in this cause disclosed an outstanding record title to various parcels of the described lands other than that disclosed by the deeds and instruments under which plaintiff claimed the right to the possession of said lands.

5. That plaintiff had failed to show that the legal title to the tracts of land in question had in fact vested in it by virtue of the various deeds of conveyance given in evidence.

Wherefore, in order that the foregoing matters and things which would not otherwise appear of record may be made so to appear and that it may be made known that the foregoing constitutes all the evidence given in the course of the trial of this case, the attorneys for the defendant pray the court to sign this bill of exceptions which has been settled by agreement of attorneys for both parties, and the same is accordingly so signed by the court and made of record this 8th day of February, A. D. 1904.

JOB BARNARD,
Associate Justice Supreme Court of the District of Columbia.

121 The foregoing bill of exceptions settled by consent this 8th. day of February A. D. 1904.

CHAS. POE,
Attorney for Plaintiff.
F. D. McKENNEY,
J. S. FLANNERY,
Attorneys for Defendant.

Stipulation of Counsel.

It is this 8th. day of February, A. D. 1904, stipulated by and between the attorneys for the respective parties that in making up the transcript of record on appeal, the clerk shall omit therefrom the plats referred to in the foregoing bill of exceptions, it being further stipulated and agreed that the original of the said plats may be referred to in the course of argument on appeal by either party if desired.

CHAS. POE,
Attorney for Plaintiff.
F. D. McKENNEY,
J. S. FLANNERY,
Attorneys for Defendant.

122 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 121, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 45179, at law, wherein The Washington, Potomac and Chesapeake Railroad Company, a corporation duly incorporated, is plaintiff, and The Chesapeake Beach Railway Company, a corporation duly incorporated, is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 4th day of March, A. D. 1904.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1411. The Chesapeake Beach Railway Company, a corporation duly incorporated, appellant, *vs.* The Washington, Potomac and Chesapeake Railroad Company, a corporation duly incorporated. Court of Appeals, District of Columbia. Filed Mar. 7, 1904. Henry W. Hodges, clerk.

FRIDAY, *April 15th, A. D.* 1904.

THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Appellant,
vs.
THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILroad Company, a Corporation Duly Incorporated. } No. 1411.

On motion the appellant is allowed to file brief herein by Tuesday next.

The argument in the above entitled cause was commenced by Mr. J. S. Flannery, attorney for the appellant, and was continued by Mr. Samuel A. Putman, attorney for the appellee.

TUESDAY, *April 19th, A. D.* 1904.

THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Appellant,
vs.
THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILroad Company, a Corporation Duly Incorporated. } No. 1411.

On motion, the appellant is allowed ten minutes additional time in the argument, and is also allowed until Friday next in which to file brief herein.

The argument in the above entitled cause was continued by Messrs. Samuel A. Putman and Charles Poe, attorneys for the appellee, and was concluded by Mr. F. D. McKenney, attorney for the appellant.

THE CHESAPEAKE BEACH RAILWAY COMPANY, Appellant,
v.
THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILroad Company. } No. 1411.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

The Washington, Potomac and Chesapeake Railroad Company brought this action of ejectment against the Chesapeake Beach Railway Company to recover possession of a strip of land in the District of Columbia.

Plaintiff's evidence tended to show title as follows:

(1.) An act of the Legislative Assembly of Maryland, approved March 20, 1868, incorporating the Southern Maryland Railroad Company, and an act of Congress, approved June 27, 1882, author-

izing the corporation to extend a railroad into and within the District of Columbia.

(2.) Deeds made by a number of persons between June 20 and December 12, 1884, conveying rights of way through the several parcels of land making up the entire strip as described in the declaration, to the Southern Maryland Railroad Company, its successors and assigns. Each deed recites a valuable consideration and appears to have been duly executed, acknowledged, and recorded.

(3.) A decree of the supreme court of the District of Columbia, passed September 1, 1885, in a suit by the Central Trust Company of New York against the Southern Maryland Railroad Company. This decree recites that on January 1, 1881, the said railroad company executed a conveyance to the said trust company in trust to secure certain bonds of its railway (as described) in Maryland and the District of Columbia, its extensions and appurtenances, with the equipments thereof, etc., "and also all rights of way and land occupied in connection with or for the construction," etc., all "property, real and personal, and improvements of any kind and description, then or thereafter to be made, acquired," etc., which was also recorded in the District of Columbia. Said decree foreclosed the lien of said trust deed and appointed Anthony M. Zane to make sale of the aforesaid property, franchises, etc.

(4.) Conveyance by Anthony M. Zane, in accordance with the requirements of the aforesaid decree and further decree ordering the conveyance to be made to Franklin E. Gregory of the rights of way aforesaid and other property.

(5.) Certificate of incorporation under the laws of Maryland of the Washington and Potomac Railroad Company, under date of April 1, 1886, reciting the purchase by Gregory of the property of the Southern Maryland Railroad Company in Maryland and the District of Columbia under foreclosure, and the purpose of the new corporation to take over the property so foreclosed.

(6.) Deed by Franklin E. Gregory, April 1, 1886, to said Washington and Potomac Railroad Company.

(7.) A trust deed made by the Washington and Potomac Railroad Company to the Union Trust Company of Philadelphia, on April 1, 1886, wherein it "doth by these presents grant, bargain, sell, alien, assign, transfer, release, convey and confirm" to the said trustee, its successors and assigns, all of the property before described as belonging originally to the Southern Maryland Railroad Company, with power of sale under certain contingencies, to secure the payment of an issue of bonds. This was also recorded in the District of Columbia.

(8.) A certificate of incorporation under the laws of Maryland on July 24, 1901, of the Washington, Potomac and Chesapeake Railway Company, organized for the purpose of taking over and operating the railway aforesaid.

(9.) A conveyance made July 25, 1901, by the Union Trust Company of Philadelphia, and other persons who had been concerned in the purchases aforesaid and in the last mentioned incorporation, to

the Washington, Potomac and Chesapeake Railroad Company aforesaid. The following extracts from this conveyance are made necessary by the contentions of the appellant:

"Whereas by a decree of the circuit court of the United States for the district of Maryland, bearing date the 22d day of May, 1900, and passed in a case therein pending, wherein the said The Union Trust Company of Philadelphia, trustee, was complainant, and The Washington and Potomac Railroad Company was defendant, the above-named The Union Trust Company of Philadelphia, trustee, was appointed trustee with authority and power to sell the property in said proceedings mentioned, the same being the Washington and Potomac railroad and its equipments and appurtenances, together with the franchises of the said Washington and Potomac Railroad Company, as by reference to the proceedings in said cause will more fully appear; and whereas, after having given bond, as required in said decree, and having complied with all the other requisites of said decree, and having given due notice of the time, place, and terms of sale by advertisements duly published, as in said decree provided, the said The Union Trust Company of Philadelphia, trustee, did on the 18th day of July, in the year 1900, at the town of Upper Marlboro, in Prince George's county, Maryland, sell the property decreed to be sold by the decree in said cause, and hereinafter more fully described; * * * and whereas, the said sale so made was duly reported to said circuit court of the United States for the district of Maryland, and was finally ratified and confirmed by the decretal order of said court bearing date the 8th of June, 1901."

Then reciting the final purchase by the plaintiff, the said trust company and others before referred to, it proceeds, in consideration of the premises and of the sum of $10, the receipt whereof is hereby acknowledged, * * * "do severally grant to the said Washington, Potomac and Chesapeake Railroad Company, party hereto of the fourth part, all the railroad of the said Washington and Potomac Railroad Company, beginning at Point Lookout at the confluence of the Potomac river and the Chesapeake bay, in St. Mary's county, in the State of Maryland, and running thence through a part of St. Mary's county, Charles county and Prince George's county, Maryland, to the city of Washington, in the District of Columbia, and its extensions and appurtenances, with the equipments thereof, consisting of all its personal property and effects of every kind, and also all the rights, liberties, privileges, immunities, and franchises of the said Washington and Potomac Railroad Company, and also all the rights of way and land used in connection with or for the construction, use, and maintenance of said railroad, its extensions and branches, together with all the bridges, culverts, sidetracks, depots, grounds, machine shops, buildings, and other structures, property, real and personal, and improvements of every kind and description acquired or erected on or connected with the said line of railroad, and all tolls, rents, and income belonging or due to said railroad company; to have and to hold the above described property, rights, privileges,

franchises, and appurtenances of every description to the said The Washington, Potomac and Chesapeake Railroad Company, its successors and assigns, and the said parties hereto of the second and third parts do hereby covenant that they will warrant specially the property hereby conveyed against encumbrances made by them, and none other, and the said parties of the first, second, and third parts hereby covenant that they will execute such further assurances as may be requisite."

The following is a substantial statement of the evidence of possession by the Southern Maryland Railroad Company and of the present possession of the defendant:

Melville C. Hazen, for thirteen years employed in the engineering department of the District, testified that he knew the old Southern Maryland tracks near Burrville and Deanwood; had passed over them many times and surveyed along the line. He made a plat for plaintiff on February 22, 1903, which was exhibited in evidence and designates the strip in controversy. He said the plats accompanying the right of way deeds and the present plat are similar. The tracks used by defendant occupy the same ground that was occupied by the track of the Southern Maryland; they enter the property at the same point and leave it likewise. When the plat was made the roadbed on the actual line of the roadbed of the Southern Maryland, was being used by the trains of defendant and had been for about three or four years. (The action was begun January 13, 1902.)

Return Jonathan Meigs, 3d, testified that he had been a surveyor for twenty-five years. In 1879 or 1880 he was employed in laying out the right of way of the Southern Maryland Railroad Company, and was again employed therein in 1886. In 1898 he was employed by the defendant in engineering work upon the same right of way. The right of way of the Southern Maryland was sixty-six feet wide, and the defendant uses this right of way to the District line. Upon the conclusion of this evidence the defendant moved the court to instruct the jury to return a verdict in its favor. This was denied and exception taken. Defendant introduced no evidence.

Plaintiff then requested a charge, which was given, to the effect that if the Southern Maryland Railroad Company entered into said land at or about the time of the execution and delivery of the several deeds to it made, and exercised acts of dominion over the same, and that defendant entered upon said property and took possession thereof prior to the bringing of the action, the verdict should be for the plaintiff. The court further charged the jury that the only question was whether the Southern Maryland Company had possession under the said deeds, and that was a question to be determined upon their opinion of the testimony relating thereto.

Before the jury retired the defendant excepted to the charge: 1st. Because the plaintiff had not shown title in the grantors in the right of way deeds. 2d. Because it had failed to show continued possession of the lands from about the date of those deeds to the

time of the alleged ouster by defendant. 3d. Because it had failed to show that either it or its immediate grantors had ever been in possession, or that any ouster of them had ever in fact occurred. 4th. Because the various counts of the declaration disclosed an outstanding record title to various parcels of the land in other than those under whom plaintiff claims. 5th. Plaintiff had failed to show that the legal title had in fact been vested in it by the deeds introduced.

Verdict was returned for the plaintiff, and from the judgment thereon the defendant has appealed.

1. No principle is more firmly established than that the plaintiff in ejectment must recover upon the strength of his own title, and not upon the weakness of his adversary's. Until the plaintiff has made a *prima facie* case the defendant is not called upon to justify his possession. Where the plaintiff's right is not founded upon a previous adverse possession under all the conditions requisite to confer title, he must, as a general rule, connect himself by a chain of transfer with the sovereignty of the soil. An exception to the rule arises where he can show that the title under which the defendant claims has an intermediate common source with his own. Anderson *v.* Reid, 10 App. D. C., 426, 429. There is another well-established exception to the general rule, namely, that a sufficient *prima facie* case is made by the plaintiff when he has shown that whilst in the quiet and undisturbed possession of the premises the defendant entered and ousted him of his possession. Bradshaw *v.* Ashley, 14 App. D. C., 484, 504; 180 U. S. 59.

This is hardly an exception to the general rule, but rather an illustration of its application under special circumstances and for a just purpose. Antecedent possession under claim of title is held to raise a presumption of regularity sufficient to warrant recovery against a mere trespasser or intruder with no color of title. It would be a great hardship, in such a case, to put the plaintiff upon formal proof of a regular chain of title; and to give the trespasser the benefit of the presumption of title by reason of a possession so acquired would be to encourage intrusion upon lands.

The plaintiff, it will be remembered, went no farther back in the deraignment of title than the several grants of the land in controversy to the Southern Maryland Railroad Company. Assuming, for the present, that the plaintiff has sufficiently shown the acquisition of the right of that company, the question arises: Was there such evidence of possession under color of that claim of title, and ouster by the defendant, as to relieve the plaintiff of the burden of the general rule in respect of proof of a complete chain of title? Notwithstanding the meagerness of that evidence as recited in the bill of exceptions, we can not say that there was error in submitting the issue to the jury. As contended by the appellant, the evidence tending to show both possession and ouster would seem to be confined to the Southern Maryland Railroad Company, whose title was thereafter attempted to be conveyed. But the point is immaterial,

because the ancient English statutes prohibiting the conveyance of lands held adversely, if ever in force in this jurisdiction, have long since become obsolete. Matthews *v.* Hevner, 2 App. D. C. 349, 357; Peck *v.* Heurich, 167 U. S. 625, 630.

The benefit of that possession, therefore, inured to the plaintiff as the holder of the title of the Southern Maryland Railroad Company. The evidence shows, in rather a general and vague way, it must be admitted, that the strip of land in controversy was once occupied by the track of the Southern Maryland Railroad Company, which is the character of possession contemplated in the grants of the right of way. It further shows that four or five years before the trial the defendant was first seen in possession of the strip over which it has since continued to run its cars. How this change of possession took place is not shown. It is not made to appear that the actual possession of the Southern Maryland Railroad Company or any one of its successors continued until the entry of the defendant; nor is it to be inferred that the defendant made its entry and by the exercise of actual force ejected the former possessor. We can not agree to the contention that these conditions are necessary to the operation of the rule under consideration. Where possession has once been taken and ownership exercised thereunder, a continuing constructive possession up to a reasonable time before bringing the action is sufficient as against an intruder who makes no pretense of color of title. This we understand to be the rule laid down by the Supreme Court of the United States in its latest utterance upon this subject. Bradshaw *v.* Ashley, 180 U. S. 59.

The defendant having failed to offer any evidence in justification or explanation of its possession, can be regarded as nothing more than a mere intruder and trespasser. On the other hand, it is not made to appear that the Southern Maryland Railroad Company, once in actual possession under claim of title, voluntarily abandoned that possession or relinquished it with the intention never to return. Having obtained a peaceable possession under grant for a valuable consideration, the presumption, in the absence of evidence to the contrary, ought, in our opinion, to be against voluntary abandonment. We say in the absence of evidence to the contrary, because there is no direct evidence of intention to abandon, and the lapse of time has not been so great as to warrant its inference, especially when the proceedings looking to the satisfaction of the debts of the Southern Maryland Railroad Company and the attempted succession to its franchises and property are taken into consideration.

2. It remains now to consider the several objections of the appellant to the sufficiency of the evidence tending to show the passage to the appellee of the presumptive title of the Southern Maryland Railroad Company under its grants of right of way. These will be passed upon in their order. (1) There is no occasion to determine whether the franchises of the Southern Maryland Railroad Company ceased and determined under the provisions of the Maryland act of incorporation, and the act of Congress extending the exercise of its fran-

chises to the District of Columbia. Passing by the question whether a failure to construct the road within the time prescribed in those acts would, of itself, have the legal effect to at once terminate the existence of the corporation, it is sufficient to say that there is no evidence from which that failure could be inferred. Without evidence the presumption of compliance must be indulged. (2) Strictly speaking, the plaintiff ought to have introduced in evidence the trust deed foreclosed by the decree of the supreme court of the District of Columbia, and enough of the record of the suit to show its entire purpose and the interests involved. But, under the circumstances, we regard the decree, and the deed made in accordance with it, as sufficient *prima facie* evidence of the transition of the title. This decree shows upon its face that the necessary parties were before the court, and contains an ample recital of the substance of the trust deed executed by the defendant, and which was regularly foreclosed upon the property therein described. (3) The last objection is to the effect given to the conveyance by the Union Trust Company to the plaintiff. That conveyance recites a decree of the circuit court of the United States for the district of Maryland, foreclosing the trust deed and appointing the Union Trust Company, the grantee in the trust deed foreclosed, as "trustee with authority and power to sell the property' described, etc.; also a sale thereunder of that property (including the land in controversy), the payment of the price and the confirmation of the sale, etc. In consideration of the premises recited, and a further consideration of $10 received, the Union Trust Company proceeds to grant the said property to the plaintiff, its successors and assigns, and concludes with a covenant to execute such further assurances as may be requisite. In view of the opinion of the Supreme Court of the United States, expressed in Muller *v.* Dows, 94 U. S. 444, 449, we are not prepared to accept the concession of the appellee that the court had no jurisdiction to include in its decree the property situated in the District of Columbia. The legal title was in the trust company, which was the plaintiff in the suit. The defendant was a Maryland corporation, and hence properly before the court and subject to its decree. The sale, it will be remembered, was not under execution, or even by a third person appointed to make the same, but was by the complainant (the holder of the legal title), acting under the decree of a court having complete jurisdiction of the persons. As was said in Muller *v.* Dows, the court "can not send its process into that other State, nor can it deliver possession of land in another jurisdiction, but it can command and enforce a transfer of the title. And there seems to be no reason why it can not, in a proper case, effect the transfer by the agency of the trustees when they are complainants." But assuming what has been conceded by the appellee, that the court had no jurisdiction to foreclosure upon property situated in the District of Columbia, and hence, that no title could pass by virtue of its decree, we pass to its contention that the conveyance had the effect

to pass the legal title of the grantor, notwithstanding the recital of that decree and the proceedings thereunder.

It is well settled that a trustee vested with the legal title can pass the same by a conveyance even when made in breach of his trust. Williams *v.* Jackson, 107 U. S. 478, 482; 1 Perry on Trusts, sec. 334. The latter says: "The general power of a trustee to sell and convey the estate is coextensive with his ownership of the legal title; and this general power over the legal title is entirely distinct from the execution of a special power given in respect to the sale of an estate."

Without denying this general proposition, the appellant controverts its application to the conveyance made. Its contention is that the recital of the decree and proceedings thereunder operates as a distinct limitation upon the title intended to be conveyed, in other words, is an express description of the power intended to be executed, and that alone.

In this we can not concur. It clearly operates upon the Maryland property and was inserted for that purpose, showing thereby the investiture of the complete title and ownership, beneficial as well as legal; but it occurs as a recital of part of the consideration of the deed, and not by way of limitation upon, or exception from, the property and estate actually conveyed. The recital can be regarded as limited in its operation to the Maryland property as distinguished from that in the District of Columbia. As to the latter it can be rejected as surplusage, and an independent valuable consideration remains, together with apt words of conveyance of the entire title of the grantor.

There is no actual limitation of the estate conveyed or the capacity in which the grantor acts, and none is necessarily to be implied.

Our conclusion is, therefore, that the court did not err in accepting the deed as an effectual conveyance of the legal title for the purposes of the action.

Finding no error in the proceedings on the trial, the judgment will be affirmed with costs. It is so ordered. Affirmed.

WEDNESDAY, *May 4th, A. D.* 1904.

THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Appellant,

vs.

THE WASHINGTON, POTOMAC AND CHESAPEAKE Railroad Company, a Corporation Duly Incorporated.

No. 1411, April Term, 1904.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, and was argued

by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said supreme court, in this cause, be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

May 4, 1904.

In the Court of Appeals of the District of Columbia.

THE CHESAPEAKE BEACH RAILWAY CO., Appellant, vs. THE WASHINGTON, POTOMAC & CHESAPEAKE Railroad Co., Appellee. } No. 1411. General Docket, April Term, 1904.

Affidavit of William S. Roney, to be used and read in opposition to the motion on behalf of the appellant herein for a writ of error to the Supreme Court of the United States and for the purpose of enabling the court equitably and justly to determine the amount of the bond to operate as a supersedeas in the event that the court should grant said writ of error.

William S. Roney a witness of lawful age first having been duly sworn deposes and says as follows:

That he is a citizen of the United States, a resident of the city of Philadelphia, in the State of Pennsylvania, and a practising attorney-at-law, and is also vice-president and secretary of The Washington Potomac & Chesapeake Railroad Co., the appellee in the above entitled cause.

That he knows that negotiations have been pending for some time for the sale of the road and corporate rights and franchises of the said appellee including the lands, road, properties and corporate rights and franchises mentioned and described in the declaration and other proceedings in this cause.

That said negotiations have so far progressed that an offer of the sum of two hundred thousand dollars ($200,000.) has been made for the purchase of the said corporate rights and franchises of the appellee in this cause which however was made dependant upon the result of this litigation and the ability of the appellee in this cause to deliver to the purchaser thereof the possession and the right of possession of the property so mentioned and described in these proceedings.

Deponent further saith upon oath that said offer of the sum of two hundred thousand dollars has been rejected by the said appellee as being far inadequate in amount and not commensurate with the true value of its said rights, lands, properties, estates and franchises.

And deponent further saith that negotiations for the purchase and

sale of said road so dependent as aforesaid upon the outcome of this cause are not at an end but said negotiations are still pending.

It is important however for the consummation of said negotiations that this appellee shall be able to deliver the possession and the right of possession of the property in these proceedings mentioned to said parties so desiring to purchase the same, forthwith, and in the event of the inability of this appellee so to do said negotiations will be declared off and an opportunity to sell said road will be lost irretrievably to it.

WILLIAM S. RONEY.

Sworn and subscribed before me this 7th day of May A. D. 1904.

[SEAL.] PAUL O. KIRSCHMANN,
Notary Public.

Commission expires Jan. 15th, 1905.

(Endorsed:) No. 1411 general docket. Chesapeake Beach Railway Company, appellant, *vs.* Washington, Potomac & Chesapeake R. R. Co. appellee. Affidavit as to proper penalty of bond to operate as supersedeas. Mr. Hodges file it. Chas. Poe, att'y for appellee. Court of Appeals, District of Columbia. Filed May 10, 1904. Henry W. Hodges, clerk.

TUESDAY, *May 10th, A. D.* 1904.

THE CHESAPEAKE BEACH RAILWAY COMPANY, a Corporation Duly Incorporated, Appellant,
vs.
THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILroad Company, a Corporation Duly Incorporated. } No. 1411.

On motion of Mr. J. S. Flannery, of counsel for the appellant, it is ordered by the court that a writ of error to remove this cause to the Supreme Court of the United States issue, and the bond to act as supersedeas is fixed at the sum of twenty-five thousand dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between The Chesapeake Beach Railway Company, a corporation duly incorporated, appellant, and The Washington, Potomac and Chesapeake Railroad Company, a corporation, duly incorporated a manifest error hath happened, to the great damage of the said appellant as by its complaint appears. We

being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of May, in the year of our Lord one thousand nine hundred and four.

Seal Court of Appeals, District of Columbia.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Know all men by these presents, that we, the Chesapeake Beach Railway Company, as principal, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the Washington, Potomac and Chesapeake Railroad Company in the full and just sum of twenty-five thousand dollars to be paid to the said The Washington, Potomac and Chesapeake Railroad Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of May, in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a session of the Court of Appeals of the District of Columbia in a suit depending in said court, between the Chesapeake Beach Railway Company and the Washington, Potomac and Chesapeake Railroad Company a judgment was rendered against the said Chesapeake Beach Railway Company and the said Chesapeake Beach Railway Company having obtained a writ or error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Washington, Potomac and Chesapeake Railroad Company citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof,

Now, the condition of the above obligation is such, that if the said The Chesapeake Beach Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make

its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of Chesapeake Beach Railway Company.]

THE CHESAPEAKE BEACH RAILWAY COMPANY, [SEAL.]
By SYL T. SMITH, *President.* [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [SEAL.]
By J. SPRIGG POOLE, *Attorney in Fact.* [SEAL.]

[Seal of Fidelity & Deposit Company of Maryland.]

Sealed and delivered in the presence of—
PAUL Y. WATERS, *Secretary.*

Approved by—
M. F. MORRIS,
Associate Justice Court of Appeals
of the District of Columbia.

[On the margin:] The surety upon this bond is satisfactory to me. Chas. Poe.

[Endorsed:] No. 1411. The Chesapeake Beach Railway Company, a corporation &c., appellant *vs.* The Washington, Potomac and Chesapeake Railroad Company, a corporation &c. Supersedeas bond on writ of error to Sup. Ct. U. S. Court of Appeals, District of Columbia Filed May 12, 1904 Henry W. Hodges, clerk.

UNITED STATES OF AMERICA, *ss:*

To the Washington, Potomac and Chesapeake Railroad Company, a corporation duly incorporated, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein The Chesapeake Beach Railway Company a corporation duly incorporated is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judg nent rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable M. F. Morris, associate justice of the Court of Appeals of the District of Columbia, this 12th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

M. F. MORRIS,
Associate Justice of the Court of Appeals
of the District of Columbia.

Service of the foregoing citation accepted this 13th day of May, 1904.

THE WASHINGTON, POTOMAC & CHESAPEAKE RAILROAD COMPANY,
By CHAS. POE, *Its Attorney.*

[Endorsed:] Court of Appeals, District of Columbia. Filed May 13, 1904. Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 87 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The Chesapeake Beach Railway Company, a corporation duly incorporated, appellant *vs.* The Washington, Potomac and Chesapeake Railroad Company, a corporation duly incorporated, No. 1411, April term, 1904, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 24th day of May A. D. 1904.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 19,371. District of Columbia Court of Appeals. Term No. 273. The Chesapeake Beach Railway Company, plaintiff in error, *vs.* The Washington, Potomac and Chesapeake Railroad Company. Filed May 25, 1904. File No. 19,371.

FILE COPY.

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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1904.

No. 273. 35.

CHESAPEAKE BEACH RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY.

ON WRIT OF ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR IN OPPOSITION TO THE MOTION TO DISMISS OR AFFIRM.

FREDERIC D. McKENNEY,
JOHN SPAULDING FLANNERY,
Attorneys for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 13352

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1904.

No. 273.

CHESAPEAKE BEACH RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY.

ON WRIT OF ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Brief on Behalf of Plaintiff in Error in Opposition to the Motion to Dismiss or Affirm.

This is an action in ejectment brought by the Washington, Potomac and Chesapeake Beach Railroad Company, the defendant in error here, against the Chesapeake Beach Railway Company, to recover the possession of nine (9) certain "pieces or parcels of ground, with the improvements thereon and the appurtenances thereof."

The parcels are described in the declaration as being tracts of land sixty-six (66) feet in width, extending through certain larger tracts of land, all lying within the District of

Columbia. The proofs tended to show that the nine strips of land constituted a railroad right of way about two and one-fifth miles long by sixty-six feet wide, upon which had been constructed a railroad consisting of the customary ties, rails, and switches over which the defendant, Chesapeake Beach Railway Company, was and since about 1898 had been daily operating its trains. The railroad had been constructed by said Chesapeake Beach Railway Company.

The declaration being in ejectment to recover possession of the designated lands and improvements thereon without any claim for damages or mesne profits, and the plea of the defendant being the general issue alone, the value of the matter in dispute does not appear in the pleadings or the judgment, nor was it made to appear directly or indirectly by the proofs. If "judicial knowledge" should be held to include knowledge as to the average cost per mile of railroad construction it might fairly be argued that the value of the two and a fifth miles of right of way and the railroad constructed thereon was more than five thousand dollars, and that therefore inferentially at least it did appear from the pleadings and proofs that the value of the matter in dispute was in excess of the amount necessary to sustain the exercise of jurisdiction by this court. However that may be, it does appear from the record that on the appeal by the Chesapeake Beach Railway Company from the supreme court of the District of Columbia to the Court of Appeals, the former court fixed the amount of the supersedeas bond at $20,000, and that a bond in such sum was filed (R. 9).

On the application by the same company for a writ of error from this court to review the judgment of the Court of

Appeals the counsel for the plaintiff company filed an affidavit to the effect that negotiations were then pending

"for the sale of the road and corporate rights and franchises of the said appellee (The Washington, Potomac & Chesapeake Railroad Company) *including the lands, roads, properties and corporate rights and franchises mentioned and described in the declaration and other proceedings in this cause.* That said negotiations have so far progressed that an offer of the sum of two hundred thousand dollars ($200,000) has been made for the purchase of the said corporate rights and franchises of the appellee in this cause" * * * "*dependent upon the result of this litigation and the ability* of the appellee in this cause *to deliver to the purchaser thereof the possession and the right of possession of the property so mentioned and described in these proceedings*" (R. 84).

Upon the strength of this affidavit and the verbal statements of said counsel the Court of Appeals fixed the amount of the supersedeas bond on the writ of error from this court at twenty-five thousand dollars ($25,000). A bond in that sum, with approved corporate surety, was filed by the defendant in error and a copy thereof appears in the transcript of record (p. 86).

In view of such showing it would seem to require considerable hardihood on the part of counsel to move to dismiss the writ of error on the ground "that it affirmatively appears upon the face of the record that the matter in dispute, exclusive of costs, does not exceed the sum of five thousand dollars." It would rather seem that the face of the record discloses either that the value of the matter in dispute is in excess of the sum of five thousand dollars or it discloses nothing whatever thereabouts.

If the court should be of opinion that the amount or value of the thing in dispute does not sufficiently appear from the

record itself, then, under the established practice, such amount or value may be shown by affidavits, for this is not a case where the nature of the action required that the value of the thing demanded should be stated in the pleadings, nor was such value an issuable fact at any stage of the proceedings, but on the contrary the writ of error was brought without controversy as to such value, and, unless such value is evidenced by the penalty of the supersedeas bonds, it nowhere appears in the record.

Red River Cattle Co. *vs.* Needham, 137 U. S., 632, 636.

The affidavits of Paul Y. Waters, Joseph Crawford, Charles W. Galloway, and Joseph Colvin, now on file in this cause and printed in an appendix to this brief, establish beyond question that the value of the possession of said right of way and the improvements thereon is at least $8,000.

From these affidavits it clearly appears that the value of the railroad track and its bed of ties and gravel alone exceeds the sum of $5,000, and the judgment complained of was—

"that the plaintiff recover against the defendant possession of the following nine tracts and parcels of land situate lying and being in the District of Columbia *together with the improvements thereon*, etc."

If it should be suggested, despite the terms of the judgment itself, that title to the rails, ties, and other improvements found on the right of way would not pass to the defendant in error in the event of final judgment in its favor, then the value of the possession or the right to use and occupy the naked right of way for its unexpired term would measure the value of the matter in dispute. It ap-

pears from the proofs that the term for which the rights of way were granted was "perpetual," and it further appears from the affidavits filed herewith that the right to the possession and use of said right of way independently of the improvements thereon is reasonably worth two thousand dollars ($2,000) a year for railroad purposes. This sum multiplied by the millennium or totality of years yet to come cannot reasonably be adjudged to amount in the quotient to less than five thousand and one dollars ($5,001).

The discussion reported in Harris *vs.* Barber, 129 U. S., 366, is instructive in this connection, and the principles there announced would seem to control this case in either of the above aspects.

It is respectfully submitted that there is not even color for the motion to dismiss; and if the court should be of such opinion, that motion as well as the cognate motion to affirm the judgment complained of should be denied.

If, however, the court should perchance be of opinion that although the motion to dismiss must be denied, nevertheless it was made upon color, and that therefore the motion to affirm is open for consideration, then we submit that the judgment of the supreme court of the District of Columbia, which was affirmed by the Court of Appeals of said District, is erroneous because of the following, among other, errors appearing therein:

1. The trial justice erred in refusing to direct a verdict for the plaintiff in error, defendant below, upon the whole case.

2. The trial justice erred in admitting in evidence in the chain of title attempted to be established by the defendant in error the decree of the supreme court of the District of Columbia in the case of The Central Trust Company of New York *vs.* Southern Maryland Railroad Company (R., 30), and the deed from the Union Trust Company of Philadelphia, trustee, to the defendant in error, dated July 25, 1901 (R., 63), it appearing from the recitals in said deeds that they were made in the course of certain equity proceedings in neither of which was the defendant railway company a party and the offer in evidence of neither of said deeds was accompanied by a proffer of the pleadings, decrees, or other proceedings in said causes, the objection on such score being particularly applicable to the admission of the latter of the two deeds, as proceedings upon which it purported to be founded were had in a foreign jurisdiction.

3. The trial justice erred in giving to the jury, over the objection of the defendant (plaintiff in error here), the instruction set forth at page 72 of the record, said instruction being erroneous in that—

(*a.*) There was no evidence that the Southern Maryland Railroad Company, under whom the plaintiff purported to deraign title to the lands in controversy, had ever been in possession of them, or

(*b.*) If so, then it having been disclosed by the declaration itself that the Commissioners of the District of Columbia had conveyed away title to most, if not all, of said lands in 1896, and it appearing from the proofs that neither the

Southern Maryland Railroad Company nor any one claiming title under it had been in possession of said lands for more than ten (10) years prior to the institution of this suit, the burden of proof was upon the plaintiff to show that the possession of said lands had not been voluntarily abandoned (Sabariego *vs.* Maverick, 124 U. S., 297), and said instruction to the jury should have been qualified to such effect.

4. Said judgment of the supreme court of the District of Columbia is erroneous in that it awarded to the plaintiff the improvements upon as well as the possession of the lands in controversy.

The plaintiff below, defendant in error here, had no corporate existence until more than four years after the Chesapeake Beach Railway Company had come into actual possession of the lands in controversy, had built its railroad thereon, and was daily operating its trains over the same. The judicial sale under which the plaintiff claims as the successor in interest of a defunct corporation, which the proof shows had had no connection with or possession of said lands for at least ten (10) years prior to the time that they came into possession of the Chesapeake Beach Railway Company, was made under the order of court of the State of Maryland, which order, as the deed itself recites, was directed solely against lands lying within the limits of that State.

It was no doubt because the proceedings in the Maryland court were limited to the lands and assets, if any, of the defunct corporation within that State, and because it was generally understood said corporation had abandoned what-

ever rights it had ever had to lands within this District, that no notice was served upon the Chesapeake Beach Railway Company, which was in open and notorious possession of said latter lands, and no attempt was made to make said company a party to said proceedings.

The principal question presented by the record and desired to be argued here is whether, in the teeth of the decision in Sabariego *vs.* Maverick, *supra*, a plaintiff in ejectment, which has never been in possession itself and claims under one or more who, also, had never been in possession, directly or indirectly, or had ever attempted to obtain possession, and whose predecessors in interest had neither directly nor indirectly asserted any right of possession for more than eleven years, can maintain an action of ejectment against one who is found to be and has been exercising open, notorious, and peaceable possession for a period of at least five (5) years, no evidence being offered tending to show that the original possession under which the plaintiff in ejectment claims had not been abandoned.

The other questions presented by the record relate to errors of law committed by the trial justice in the admission of documents of vital importance, in the attempt to establish a record title to the land, in his instructions to the jury, and to the erroneous character of the judgment entered upon the verdict.

A proper consideration of these questions will necessitate a close examination of the evidence offered by the defendant in error, which was all the evidence in the cause, the plain-

tiff in error having elected to rest upon its exception to the refusal of the court to direct a verdict in its favor.

A casual inspection of the transcript of the record in the light of the foregoing assignments or suggestions of error will establish beyond cavil that this writ of error is well founded, that the questions raised are not frivolous, that the writ of error was not sued out merely for delay, and that the merits of the case are worthy of the consideration of this court, and that the plaintiff in error is entitled to be heard thereabouts.

This cause will be reached for hearing in its regular order at the present term of the court.

The defendant in error is amply protected from any losses by his supersedeas bond and can suffer no harm by awaiting the disposition of this cause on the regular call of the docket.

FREDERIC D. McKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Plaintiff in Error.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1904.

CHESAPEAKE BEACH RAILWAY COMPANY, *Plaintiff in Error*,
vs.
WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY, *Defendant in Error*.
} No. 273.

Affidavit on Behalf of Plaintiff in Error in Opposition to Motion to Dismiss.

DISTRICT OF COLUMBIA, *ss:*

Paul Y. Waters, being first duly sworn, deposes and says that he is a citizen of the United States and a resident of the State of Maryland, and is the general manager of The Chesapeake Beach Railway Company, the plaintiff in error in the above entitled cause, and has been continuously connected with said company in various official capacities for many years past; that he has had much experience in the purchase of railroad properties and equipments and knows the value thereof; that he has personal knowledge of the parcels of land and premises in the District of Columbia described in the declaration in the above-entitled cause; that said parcels of land and premises form a railroad right of way 66 feet in width and about 2.2 miles in length, extending from the boundary line of the District of Columbia and the State of Maryland to Burrville, in said District; that said right of way is improved by 2.2 miles of single-track railroad and .44 mile of single-track railroad sidings; that the rails are of steel, weighing 70 pounds to the yard, and are in a good state of preservation; that the cross-ties are new, and both said rails and cross-ties were placed on said right of way by said Chesapeake Beach Railway Company at a cost of more than $8,000, and said improvements have been made and now

afford the basis of an assessment of $7,760 levied against said property by the assessor of the District of Columbia.

This affiant further says that said Chesapeake Beach Railway Company on or about November 13, 1897, entered into the possession of the nine parcels of land and premises constituting said right of way by permission of the owner thereof, who had acquired title to six of said nine parcels through the various conveyances made by the Commissioners of the District of Columbia to Michael I. Weller and George R. Repetti, which are set up and described in the plaintiff's declaration in this cause; that ever since said company entered into possession of said right of way it has had the continuous, peaceable, and exclusive possession, control, and use thereof and of the valuable improvements which it has placed thereon, and it was not until the plaintiff had filed its declaration in this cause, on the 13th day of January, 1902, that this affiant or said Chesapeake Beach Railway Company received any knowledge of any claim to said property adverse to its own.

This affiant further says that he has personal knowledge of the prices paid for rights of way for railroad purposes in the State of Maryland and in the District of Columbia under agreements of sale and of lease, and believes that the possession and use of said 2.2 miles of right of way, independently of and entirely apart from the improvements thereon, are reasonably worth $2,000 a year to any company needing the same for railroad purposes.

PAUL Y. WATERS.

Subscribed and sworn to before me this 7th day of October, A. D. 1904.

[SEAL.] ARTHUR S. FILL,
Notary Public, D. C.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1904.

CHESAPEAKE BEACH RAILWAY COMPANY, *Plaintiff in Error*,
vs.
WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY, *Defendant in Error*.
No. 273.

Affidavit on Behalf of the Plaintiff in Error in Opposition to Motion to Dismiss.

DISTRICT OF COLUMBIA, *ss*:

Joseph Crawford, being first duly sworn, deposes and says that he is a citizen of the United States and a resident of the District of Columbia and is the general agent of the Philadelphia, Baltimore and Washington Railroad Company in the District of Columbia, and has been in the service of said company and of other railroad companies in various capacities for 40 years; that he has had much experience in the purchase of railroad properties and equipments and knows the value thereof and has also personal knowledge of the prices paid under agreements of sale and of lease for railroad rights of way in the vicinity of the District of Columbia and elsewhere; that he has personal knowledge of the parcels of land and premises in the District of Columbia described in the declaration in the above entitled cause, which comprises the right of way, as he is informed and believes, 66 feet in width and 2.2 miles in length, extending from the boundary line of the District of Columbia and the State of Maryland to Burrville in said District; that said right of way is improved by a single track-railroad and its sidings; that the rails are of steel, weighing 70 pounds to the yard and in a good state of preservation, and that the cross-ties are substantially new; this affiant, from his knowledge of the cost of such rails and ties, believes the reasonable value of the same to be not less than $8,000.00.

This affiant further says that the possession and use of said right of way, independently of the improvements

thereon, are reasonably worth $2,000.00 a year for railroad purposes.

JOS. CRAWFORD.

Subscribed and sworn to before me this 8th day of October, A. D. 1904.

[SEAL.] WM. CAREY JOHNSON,
Notary Public, D. C.

Term expires Dec. 20, '04.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1904.

CHESAPEAKE BEACH RAILWAY COMPANY, *Plaintiff in Error*,
vs.
WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY, *Defendant in Error*.
} No. 273.

Affidavit on Behalf of Plaintiff in Error in Opposition to Motion to Dismiss.

STATE OF MARYLAND, *City of Baltimore*, } *ss:*

Charles W. Galloway, being first duly sworn, deposes and says that he is a citizen of the United States, and a resident of the State of Maryland, and is the superintendent of Baltimore division of the Baltimore and Ohio Railroad Company. Has been in the service of said company and other railroad companies in various capacities for many years; that he has had much experience in the purchase of railroad properties and equipments and knows the value thereof, and has also personal knowledge of the prices paid under agreements of sale and of lease for railroad rights of way in the vicinity of the District of Columbia; that he has personal knowledge of the parcels of land and premises in the District of Columbia described in the declaration in the above-entitled cause, which comprises the right of way, as he is informed and believes, 66 feet in width and 2.2 miles in length ex-

tending from the boundary line of the District of Columbia and the State of Maryland to Burrville in said District; that said right of way is improved by a single-track railroad and its sidings; that the rails are of steel weighing 70 pounds to the yard and in a good state of preservation, and that the cross-ties are substantially new. This affiant, from his knowledge of the cost of such rails and ties, believes the reasonable value of the same to be not less than $8,000.00.

This affiant further says that the possession and use of said right of way independently of the improvements thereon are reasonably worth $2,000.00 a year for railroad purposes.

CHARLES W. GALLOWAY.

Subscribed and sworn to before me this seventh day of October, A. D. 1904.

[SEAL.]

ARTHUR S. FILL,
Notary Public, D. C.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1904.

CHESAPEAKE BEACH RAILWAY COMPANY, *Plaintiff in Error,*
vs.
WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY, *Defendant in Error.*
} No. 273.

Affidavit on Behalf of Plaintiff in Error in Opposition to Motion to Dismiss.

DISTRICT OF COLUMBIA, ss:

Joseph Colvin, being first duly sworn, deposes and says that he is a citizen of the United States and a resident of the District of Columbia, and is the superintendent of the Washington, Alexandria and Mount Vernon Railway Company, and has been in the service of said company and of other railroad companies in various capacities for many years; that he has had much experience in the purchase of railroad properties and equipments and knows the vaue thereof,

and has also personal knowledge of the prices paid under agreements of sale and of lease for railroad rights of way in the vicinity of the District of Columbia; that he has personal knowledge of the parcels of land and premises in the District of Columbia described in the declaration in the above-entitled cause, which comprises the right of way, as he is informed and believes, 66 feet in width and 2.2 miles in length, extending from the boundary line of the District of Columbia and the State of Maryland to Burrville, in said District; that said right of way is improved by a single-track railroad and its sidings; that the rails are of steel, weighing 70 pounds to the yard, and in a good state of preservation, and that the cross-ties are substantially new; this affiant from his knowledge of the cost of such rails and ties believes the reasonable value of the same to be not less than $8,000.00.

This affiant further says that the possession and use of said right of way, independently of the improvements thereon, are reasonably worth $2,000.00 a year for railroad purposes.

JOSEPH COLVIN.

Subscribed and sworn to before me this seventh day of October, A. D. 1904.

[SEAL.]

ARTHUR S. FILL,
Notary Public, D. C.

FILE COPY.

Office Supreme Court U. S.
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OCT 31 1905
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 35.

THE CHESAPEAKE BEACH RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR PLAINTIFF IN ERROR.

FREDERIC D. McKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Plaintiff in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 18877

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 35.

THE CHESAPEAKE BEACH RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR PLAINTIFF IN ERROR.

PRELIMINARY STATEMENT.

This case comes before this court on writ of error to review a judgment of the Court of Appeals of the District of Columbia affirming a judgment of the supreme court of said District in favor of The Washington, Potomac and Chesapeake Railroad Company, the plaintiff in that court, and against The Chesapeake Beach Railway Company, the defendant in the trial court and the plaintiff in error here.

The action, which was one of ejectment, was brought by The Washington, Potomac and Chesapeake Railroad Company, the defendant in error here, against The Chesapeake Beach Railway Company to recover possession of nine (9) "pieces or parcels of ground, with the improvements thereon and the appurtenances thereof."

The parcels of ground in controversy are not described or identified by metes and bounds anywhere in the transcript of record, but they are indefinitely described in the declaration as being tracts of land sixty-six (66) feet in width, extending through certain larger tracts of land, all lying within the District of Columbia. The proofs tended to show that the nine strips of land sued for constituted a railroad right of way about two and one-fifth miles long by sixty-six (66) feet wide, upon which had been constructed by the defendant, Chesapeake Beach Railway Company, a railroad consisting of the customary ties, rails, and switches, and over which said Chesapeake Beach Railway Company was at the time of the trial and since about 1898 had been daily operating its trains.

Notwithstanding the meagerness of description contained in the various deeds under which the plaintiff claimed title, and the fact that the plaintiff's witness, Hazen, a surveyor, who was called to connect plaintiff's alleged title with the ground in dispute, testified that "the deed is not definite enough to place it on the ground," and notwithstanding that there was no evidence tending to prove that the Southern Maryland Railroad Company, the source of plaintiff's alleged title, had ever entered into possession of the lands in controversy under any of the deeds to it, the trial judge sub-

mitted the question of such possession *vel non* to the determination of the jury, saying that—

"The only question is whether or not this plaintiff (The Washington, Potomac and Chesapeake Railroad Company), as a successor of the Southern Maryland Railroad Company, now has the title to this right of way which has been described, and whether the Southern Maryland Railroad Company, the corporation whose charter has been introduced in evidence, had possession of that property. * * *

"They (counsel for defendant) say there is no evidence here to show that the Southern Maryland railroad ever went into possession of this ground under its charter. That question must depend upon your valuation of the testimony introduced here.

"Whether or not the testimony of those witnesses is sufficient to establish that fact, and whether that testimony is properly to be believed by you, under all the circumstances of the case, is a question of fact which is submitted to you" (R., 73).

The plaintiff company did not come into existence until more than four years after the Chesapeake Beach Railway Company had been in actual possession of the lands in controversy, and had built its railroad thereon, and was daily operating its trains thereover. The judicial sale under which the plaintiff immediately claims title as the successor in interest of the Washington and Potomac Railroad Company, a defunct corporation (which latter company itself is not shown ever to have been in possession of said rights of way, or directly or indirectly to have had any connection therewith for at least ten (10) years prior to the time that they came into possession of the Chesapeake Beach Railway Company) was made under an order of a court of the State of Maryland, which order, as the deed itself recites, was directed solely against lands lying within the limits of that State.

It was no doubt owing to this latter fact, as well as to the further fact that that defunct corporation never made any claim to lands in this District, that no notice of the pendency of those proceedings in Maryland was served upon the Chesapeake Beach Railway Company, which company for several years had been in the open and notorious possession of said rights of way.

The principal question presented by the record and to be argued here is whether, in view of the decision in *Sabariego vs. Maverick*, 124 U. S., 297, a plaintiff in ejectment, which has never been in possession and only claims title by conveyance from one or more who have never been in possession, directly or indirectly, and have never claimed the right of possession of the property in dispute for, say, more than eleven years, can maintain an action of ejectment against one who is found to be and has been exercising open, notorious, and peaceable possession for a period of at least five (5) years, there being no evidence on the part of the defendant tending to prove record title in itself.

Other questions presented by the record cover errors of law committed by the trial justice in the admission of documents at the request of plaintiff in its attempt to establish record title to the lands, and in the instructions to the jury on the question of actual possession by the Southern Maryland Railroad Company, and to the erroneous character of the judgment entered upon the verdict.

ASSIGNMENTS OF ERROR.

1. The trial justice erred in refusing to direct a verdict for the plaintiff in error, defendant below, upon the whole case.

2. The trial justice erred in admitting in evidence, in the chain of title attempted to be established by the defendant in error, the decree of the supreme court of the District of Columbia in the case of The Central Trust Company of New York *vs.* Southern Maryland Railroad Company (R., 30), and the deed from the Union Trust Company of Philadelphia, trustee, to the defendant in error, dated July 25, 1901 (R., 63), it appearing from the recitals in said deeds that they were made in the course of equity proceedings to which the defendant railway company was not a party; neither of said deeds having been accompanied by a proffer of the pleadings, decrees, or other proceedings in said causes; the objection on this score being particularly applicable to the admission in evidence of the latter of the two deeds, as the proceedings upon which it purports to have been founded were had in a foreign jurisdiction.

3. It was error on the part of the trial court to instruct the jury as follows:

"The jury is instructed that if you believe from the evidence that the plaintiff derives its title to the land in controversy as the successor in title to the Southrern Maryland Railroad Company and that said Southern Maryland Railroad Company entered into said land, at or about the time of the execution and delivery of the various deeds to it and exercised acts of dominion over the same, and that the de-

fendant entered upon said property and took possession thereof prior to the bringing of this suit, then your verdict should be for the plaintiff"

said instruction being erroneous, in that

(*a.*) There was no evidence that the Southern Maryland Railroad Company, from whom the plaintiff purported to deraign title, had ever been in possession of the lands or right of way in controversy.

(*b.*) It having been disclosed by plaintiff's declaration that the Commissioners of the District of Columbia had conveyed the title to parcels of said lands in 1896 to persons other than plaintiff's alleged grantors, and it not appearing from the proofs that either the Southern Maryland Railroad Company or any one claiming title under it had been in possession of said lands or rights of way for more than ten (10) years prior to the institution of this suit, the burden of proof was upon the plaintiff to show that the possession of said lands had not been voluntarily abandoned (Sabariego *vs.* Maverick, 124 U. S., 297), and said instruction to the jury should have been qualified to such effect.

4. The judgment of the supreme court of the District of Columbia is erroneous in that it awarded to the plaintiff the improvements upon as well as the possession of the lands in controversy.

STATEMENT OF FACTS AND ARGUMENT.

The plaintiff, The Washington, Potomac and Chesapeake Railroad Company, claims to be the owner and entitled to the possession of the parcels in controversy as the successor in interest of the Southern Maryland Railroad Company, and alleges in its declaration that on, to wit, the 24th day of September, 1901, it was lawfully seized thereof and was unlawfully ejected therefrom by the defendant.

Plaintiff did not deraign title through the Southern Maryland Railroad Company from the United States or the State of Maryland or any other primary source of title, nor was it suggested that plaintiff and defendant deraigned title from a common source. While no evidence was introduced by either party tending to show how or under what claim of title defendant held, it was shown by plaintiff's own witnesses that the defendant had constructed a railroad on the ground in controversy and had been running trains over it since about 1898 (R., 70, 71).

Plaintiff offered evidence tending to show a charter to the Southern Maryland Railroad Company by act of the Legislative Assembly of the State of Maryland approved March 20, 1868 (p. 10), but did not offer any testimony tending to show any organization for business under said charter, or that the construction of the railroad contemplated by said charter had ever been undertaken.

It also gave in evidence an act of the Congress approved June 27, 1882 (R., 10), entitled "An act to authorize the Southern Maryland Railroad Company to extend a railroad into and within the District of Columbia," but it did not

offer any testimony tending to prove that said company had undertaken to construct a railroad within said District, or that the lands in the possession of the defendant were in anywise identified with the line or route of the railway authorized by said statute, or that said grantee company had undertaken the construction of the railroad contemplated by said act within the times specified or at any other time, or that it had ever owned a car or turned a wheel either within or outside of the District of Columbia.

Said act of Congress expressly limited the grant of right or power of construction within the District of Columbia to a specified route and from and to certain specified terminal points, but no evidence whatever was introduced tending to connect the lands in controversy with the line of route marked out by said act. Said Act in part read as follows:

"the said Southern Maryland Railroad Company are hereby authorized to exercise the same powers, rights and privileges, and are subject to the same restrictions, in the extension and construction of their said railroad into and within the said District, as may be now exercised by railroad companies organized under the general laws in force for the incorporation of railroad companies in the District of Columbia, it being expressly understood that the Southern Maryland Railroad Company shall have power to construct a railroad within the District only along the routes and from and to the terminal points hereinbefore indicated.

* * * * * *

"SEC. 4. That unless the said company shall commence the construction of said railroad within one year, and shall complete the same, with at least one set of tracks within two years from the passage of this act, then this act and all rights and privileges hereby granted shall cease and determine."

In its attempt to deraign title from the Southern Maryland Railroad Company plaintiff, after the above, next introduced

in evidence nine several deeds, which are set forth at large in the transcript of record, at pages 10 to 29, inclusive, the same, in brief, being as follows:

A. Dean to the Southern Maryland Railroad Company, dated June 20, 1884, and recorded June 27, 1884; recites that grantors were the owners of a certain tract of land through which grantee had located its roadway, and conveyed to grantee, its successors or assigns, "the right of way through said piece, parcel or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet," amounting in the whole to 2.27 acres, "as exhibited on the plat hereto annexed and made a part hereof, to have and to hold the same so long as the same shall be required, for the uses and purposes of said roadway" (R., 11).

B. Wilson to same grantee, dated June 30, 1884, recorded July 1, 1884; recites that grantee has located "their roadway" through a certain parcel of described land belonging to grantors and conveys to grantee, its successors and assigns, "the right of way through said piece, parcel, or tract of land the whole distance of said roadway through the same for a width of sixty-six (66) feet," as exhibited on the annexed plat, to have and to hold the same, amounting to twenty-six one-hundredths of an acre, "so long as the same shall be required for the uses and purposes of said roadway" (R., 13).

C. Daniel to same grantee, dated June 19, 1884, recorded June 26, 1884, recites that grantee has located its roadway through a certain parcel of described land belonging to grantors, and conveys to grantee, its successors and assigns, "the right of way through said piece, parcel, or tract of

land the whole distance of said roadway, through the same, for a width of sixty-six (66) feet," amounting to $1\frac{2}{10}$ acres as exhibited by the plat which is annexed to and made part of these presents; to have and to hold the same so long as it "shall be required for the uses and purposes of said railroad" (R., 15).

D. Lowrie to same grantee, dated June 20, 1884, recorded June 26, 1884; similar in its recitals and in its granting and habendum clauses to the preceding (R., 17).

E. Owen to same grantee, dated July 2, 1884, recorded July 3, 1884; similar in its recitals and in its granting and habendum clauses to the preceding (R., 18–19).

F. Johnson to same grantee, dated July 19, 1884, recorded July 23, 1884; similar in its recitals and in its granting and habendum clauses to the preceding (R., 20–21).

G. McEuen to same grantee, dated December 6, 1884, recorded January 2, 1885; similar in its recitals and in its granting and habendum clauses to the preceding (R., 21–23).

H. Hanson to same grantee, dated December 12, 1884, recorded March 19, 1885; similar in its recitals and in its granting and habendum clauses to the preceding (R., 24–25).

I. Wiessner to same grantee, dated August 25, 1884, recorded March 19, 1885; similar in its recitals and in its granting and habendum clauses to the preceding (R., 28–29).

It will be noted that each of these deeds recited a prior location by grantee of "their roadway" through the lands

of grantors, and the granting and conveyance by the latter to the former of "the right of way through" said lands "so long as the same shall be required for the uses and purposes of said roadway."

In connection with the above act of Congress and said nine deeds, and as tending to prove entry into possession by the Southern Maryland Railroad Company under the latter, the plaintiff introduced as a witness Melvin C. Hazen, who testified "that for thirteen years last past he had been in the employ of the engineering department of the District of Columbia; he knew the old Southern Maryland Railroad tracks out there near Burrville and Deanwood, and had known them the entire time he had been in the District service, thirteen years, * * * he had passed over them a great many times; from Burrville to the northern District line ties and rails were down a good many years ago along the *time* of the old Southern Maryland; * * * at Mr. Poe's request he had surveyed the line of the old Southern Maryland and made a plat of the same (the plat made by witness was here exhibited to the court and jury); the Southern Maryland comes in there (indicating on plat); it is a sixty-six foot right of way."

Q. Who is using that at the present time?

A. The Chesapeake Beach Railway Company.

The above plat was made February 22, 1903. When witness surveyed the ground he found the Chesapeake Beach railway there; he had marked the outside boundaries of each parcel, and then the railroad passing through each tract (R., 70).

By the COURT:

Q. You surveyed these from the deeds?

A. I surveyed it more, your honor, from the holdings. The tracks were there when I made this survey. *The deed is not definite enough to place it on the ground.*

Q. *And you got your data from the ground itself?*

A. *Yes, sir.*

The plats recorded with the deeds to the Southern Maryland Railroad Company and this plat (indicating his own plat) are as near identical as it is possible to make them. * * * The present tracks of the Chesapeake Beach Railway Company and the track of the Southern Maryland Railroad Company, as shown by the plat, are as identical as it is possible to make them; * * * at the time witness made the plat he saw trains of the Chesapeake Beach Railway Company using this road-bed and had seen them many times before and since; they were upon the actual line of the road-bed of the Southern Maryland railroad as conveyed by the deeds running to that company; witness first saw trains of the Chesapeake Beach Railway Company running over these tracks which he designated as the Southern Maryland railroad about three or four years ago (R., 71).

Plaintiff also introduced as a witness in its behalf R.. J Meigs, 3d, who testified that he had been a surveyor for the past twenty-five years. In 1879 or 1880 he was employed as a surveyor in laying out the right of way and road-bed for the Southern Maryland Railroad Company. He was again employed in that work in 1886. He remembers the line of this right of way. About 1898 witness was employed by the Chesapeake Beach Railway Company on some engineering work upon this same right of way. The right of

way of the old Southern Maryland railroad was sixty-six feet wide, and according to his recollection the Chesapeake Beach railway uses the right of way of the old Southern Maryland railroad clear to the District of Columbia line. The railroad now, as heretofore, consists of a single track (R., 71, 72).

In the same connection plaintiff also introduced in evidence a decree by the supreme court of the District of Columbia passed September 1, 1885, in the cause of The Central Trust Company of New York against The Southern Maryland Railroad Company, in equity, No. 9442, which recited, among other things, that the court finds, from the bill, answer, and exhibits * * * that the Southern Maryland Railroad Company was, * * * on the first day of January, 1881, and prior thereto, a corporation * * * under the laws of the State of Maryland, and had its principal office and place of transacting business at the city of Baltimore in said * * * State; that on or about the first day of January, 1881, said Southern Maryland Railroad Company, in the exercise of its lawful powers made and executed its certain bonds bearing date January 1, 1881, and payable January 1, 1911 (R., 30); that thereafter said company did cause to be issued and sold a large number of said bonds properly authenticated which were, at the date of the decree, outstanding in the hands of divers persons; that to secure payment of the principal and interest of said bonds said railroad company, on or about said January 1, 1881, in the exercise of its lawful powers, made, executed, and delivered to the Central Trust Company of New York its deed of trust or mortgage conveying to said trust company, as trustee, all of its rail-

road, beginning at Point Lookout, in the State of Maryland and running thence to the city of Washington, in the District of Columbia, together with its extensions, appurtenances, equipments, rights, privileges, and franchises, " and also all rights of way and land occupied and used in connection with or for the construction, completion, and maintenance of said railroad, its extensions and branches, together with all bridges, culverts * * * buildings and other structures, property real and personal, and improvements of every kind and description, then or thereafter to be made, acquired or erected, on or connected with the said line of railroad."

That said deed of trust or mortgage was duly recorded in the land records *of the several counties* where said railroad and other mortgaged property were situated, and that the same became and constituted and then was a first and paramount lien upon said railroad and other mortgaged premises and property therein described (R., 31.)

That on the first day of July, 1881, and on the first days of January and July thereafter in the years 1882 to 1885, inclusive, semi-annual installments of interest on said bonds, as evidenced by interest coupons attached thereto, fell due and were not paid, although demand therefor was made (R., 32); that default had been thereby made in the terms and conditions of said mortgage, and said conveyance to the complainant as trustee had become absolute, and complainant had been requested by the holders of more than one-half in amount of all outstanding bonds to proceed to foreclose said mortgage and to sell said mortgaged property to the highest bidder at public auction in the city of Philadelphia (R., 33); wherefore it was decreed that in default of the payment by

the railroad company within thirty days of the amount due on account of said interest in arrear and certain other sums to cover costs and expenses (R., 33) "all equity of redemption of the said defendant, The Southern Maryland Railroad Company, of, in and to the said mortgaged premises, property, rights, assets and franchises, and every part and parcel thereof described, or embraced, or intended so to be, in said deed or indenture of trust or mortgage, TO WHICH AND TO SAID BILL OF COMPLAINT REFERENCE IS NOW MADE FOR A FULL AND COMPLETE DESCRIPTION, BE FORECLOSED and cut off and forever barred, and that said mortgaged property and premises, to wit: all the railroad of the Southern Maryland Railroad Company beginning at Point Lookout, &c., in the State of Maryland and running thence to the city of Washington in the District of Columbia * * * and also all the rights of way and lands occupied and used in connection with or for the construction, completion and maintenance of said railroad its extensions and branches, together with all * * * property real and personal, and improvements of every kind * * * at the time when said mortgage was executed belonging to said railroad company or since made, acquired or erected on or connected with, the line of said railroad * * * be sold in accordance with the said prayer of said bill of complaint" (p. 34), and Anthony M. Zane was appointed trustee to make the sale under the following, among other, conditions: Said sale should take place in the city of Philadelphia after notice of intention to make same should have been first given "in two daily newspapers of general circulation published in the city of Baltimore, State of Maryland" (R., 34).

Said Zane was also authorized by said decree as trustee to make, execute, and deliver to the purchaser a deed of conveyance of the property sold, and it was further decreed that the purchaser should hold, possess, and enjoy the mortgaged premises and property therein decreed to be sold and all the rights, privileges, and franchises appertaining thereto as fully and as completely as the Southern Maryland Railroad Company at the time of the commencement of the suit held and enjoyed the same, and said purchaser should hold said railroad and property free and discharged of and from the lien of the mortgage and from the claims of all parties to said cause.

January 18, 1886, said Zane reported to the said court that after previous advertisement in the Baltimore Morning Herald and the Baltimore Sun and in the Philadelphia Record he had sold on January 13, 1886, "the said mortgaged property and premises to Franklin E. Gregory" (R., 38), and his report of sale was ratified by the court March 1, 1886 (R., 40).

The foregoing was all of the evidence of every sort and kind introduced on the trial concerning the supposed connection of the Southern Maryland Railroad Company with the strips of land in controversy. Neither the bill of complaint nor the answer nor the exhibits referred to in the decree of the supreme court of the District of Columbia were given in evidence, and the decree itself contains no words aptly describing any of said strips of land, or, indeed, any other lands which said Southern Maryland Railroad Company might have acquired in the District of Columbia; for

a description of the lands intended to be affected thereby and sold thereunder it expressly refers to the mortgage and to the bill of complaint in the cause in which it was passed, neither of which were before the trial court.

In the absence of any evidence tending to connect the lands covered by the nine deeds from A to I, inclusive, with the description of the lands and rights of way contained in the bill of complaint and deed of trust upon which the decree in question was founded, and in the absence of any evidence tending to show that said deed of trust had ever been recorded in the land records of the District of Columbia, said decree reciting the finding of the court that "said deed or indenture of trust or mortgage *was duly recorded in the land records of the several counties where said railroad and other mortgaged property were situated*" (R., 31), and in the absence of any evidence tending to show that said strips of land covered by said deeds from A to I constituted any portion of the line or right of way of the railroad of the Southern Maryland Railroad Company from Point Lookout, Maryland, to the city of Washington, in the District of Columbia, as described in said decree and deed of trust, it was not legally competent either for the trial justice or the jury to assume that the strips of land lying within the District of Columbia and here in dispute were covered or intended to be covered by said deed of trust and decree.

Even assuming that said deed of trust executed in 1881, as recited by the decree did purport to convey to the trust company, as trustee, in addition to the railroad from Point Lookout to Washington city, "all the rights of way and land occupied and used in connection" therewith, together with all "buildings and other structures, property, real and

personal, and improvements of every kind * * * *then or thereafter to be made, acquired, or erected, or connected with said line of railroad*" (R., 31), still, in the absence of any testimony whatever tending to show either the recording of said deed of trust in the District of Columbia or that the lands covered by said deeds from A to I, inclusive, which were executed in the year 1884, fell within the description of property "thereafter" "acquired or connected with *said line of railroad*," it would seem to have been error on the part of the trial justice to assume and permit the jury to assume that those lands were in fact covered or intended to be, either by the terms of said decree or the bill of complaint or the deed of trust referred to therein.

There was no evidence whatever given on the trial that the Southern Maryland Railroad Company had operated within the District of Columbia at any time. Assuming that the recitals of the said deeds from A to I executed in the year 1884, as above stated, are to be taken as binding upon third parties, the most that is derivable therefrom is that prior to the dates of said deeds respectively the Southern Maryland Railroad Company had "located their roadway" through the lands of vendors.

There is no evidence whatever tending to show that the grantee, Southern Maryland Railroad Company, ever took possession of any of said lands under the terms of said right-of-way deeds. The testimony of both Hazen and Meigs falls far short of tending to establish any such fact.

As appears from the bill of exceptions, this case was tried in November, 1903 (R., 10). Hazen testified that he had known the "old Southern Maryland railroad tracks out there near Burrville and Deanwood" for thirteen years—that

is, since about 1890. He gives no testimony whatever tending to prove the existence at that time of the Southern Maryland Company, nor does he indicate that to his knowledge such company ever had existed or owned property in the locality indicated, but he says that for several years prior to the trial he had seen trains of the Chesapeake Beach Railway Company "running over these tracks which he designated as the Southern Maryland railroad" (R., 71).

According to the decree and report of sale upon which plaintiff relied, the interest of the Southern Maryland Railroad Company in the land in controversy had been foreclosed and transferred to Gregory five years prior to the time when Hazen first became acquainted with the tracks which he "designated as the Southern Maryland railroad."

The testimony of the witness Meigs did not add anything to the above so far as tending to prove possession of the lands sued for by the Southern Maryland railroad is concerned. He testified that in 1879 or 1880 he was employed as a surveyor in laying out the right of way and road-bed for the Southern Maryland Railroad Company; that he was again employed in that work in 1886. He does not state who employed him nor where the portion of the right of way and road-bed upon which he was engaged was located, nor whether it was within or outside of the District of Columbia. As prior to June 27, 1882, the Southern Maryland Railroad Company had no right to acquire land nor construct a railroad within the District of Columbia, the presumption is that if employed at all by that company he was engaged upon its right of way in Maryland, and as it appears from the deeds themselves that the Southern Maryland Railroad Company did not purport to acquire title to any of

the lands in suit until June, 1884, it cannot be reasonably contended that any surveying which the witness might have done thereon in 1879 or 1880, even if done for the Southern Maryland Company, was evidence of an assertion of right to occupy or possess said lands or any of them.

With respect to the work of laying out right of way and road-bed, which witness testifies that he did in 1886, it is to be noted that according to the decree of the supreme court of the District of Columbia introduced in evidence by the plaintiff, under which it seeks to deraign title and by the terms of which it is necessarily bound, title to whatever lands had been conveyed to the Central Trust Company by the indenture of trust of January 1, 1881, had "become absolute" prior to September 1, 1885 (date of said decree), and had been sold on January 13, 1886, to Franklin E. Gregory.

In view of the failure of witness to state by whom he was employed to do whatever surveyor's work he did in 1886, and at what time in 1886, and upon what portion of the right of way he was so employed—the burden of proof being upon the plaintiff—it should not have been left to the jury to infer that the work referred to by witness was done prior to the sale or the ratification of said sale (March 1, 1886) rather than afterwards; and in the absence of any assertion by the witness that he had been employed at any time by the Southern Maryland Railroad Company it was error to permit the jury to infer that fact.

Notwithstanding the foregoing was the entire evidence on the subject of the supposed connection of the Southern Maryland Railroad Company with the lands in suit, the

trial judge, over the objection and exception of the defendant, charged the jury as follows:

"The jury is instructed that if you believe from the evidence that the plaintiff derives its title to the land in controversy as the successor in title to the Southern Maryland Railroad Company and that said Southern Maryland Railroad Company entered into said land, at or about the time of the execution and delivery of the various deeds to it and exercised acts of dominion over the same, and that the defendant entered upon said property and took possession thereof prior to the bringing of this suit, then your verdict should be for the plaintiff" (R., 73).

This instruction was erroneous, in that, as above stated, there was no testimony whatever tending to show "that said Southern Maryland Railroad Company entered into said land at or about the time of the execution and delivery of the various deeds to it and exercised acts of dominion over the same." An entry into possession and the exercise of acts of dominion are not to be inferred from or predicated upon a suggestion that a surveyor surveyed a right of way or located the lines of a road-bed across said land, nor from the fact that a District engineer designated certain tracks which he found upon the lands, as to the origin or ownership of which he had no knowledge, as the tracks of the Southern Maryland Railroad Company.

The making of a crop is not sufficient basis upon which to predicate a claim of possession (Conn *vs.* Franklin, 19 S. W. Rep., 126), nor is the causing of surveying to be done (Thompson *vs.* Burhans, 61 N. Y., 52; Greenleaf *vs.* Railroad, 141 N. Y., 395).

Neither Hazen nor Meigs testified by whom the tracks referred to were laid, nor when they were laid, nor that any

company other than the defendant, Chesapeake Beach Railway Company, ever owned any tracks upon said lands or operated trains across them. Neither witness testified that the lands in question were enclosed or ever had been, and we respectfully submit that the fact that plaintiff's witnesses designated the tracks and rights of way in question as the tracks and rights of way of the Southern Maryland Railroad Company is insufficient to support an inference that said rights of way had ever been entered upon, used, or claimed by the Southern Maryland Railroad Company, or that the tracks in question had been laid and were owned by it.

If it should be assumed *arguendo* that the witnesses' statements were sufficient to support an inference of entry into possession by the Southern Maryland Railroad Company of the rights of way in question, no attempt whatever, was made to show that said railroad company maintained its corporate existence or continued in possession of said rights of way or any of them subsequent to January 16, 1886, when the sale to Gregory was made, or March, 1886, when said sale was confirmed.

It is not pretended that Gregory or any person or corporation claiming under him, including the plaintiff corporation itself, ever entered into possession of any portion of said right of way or, with the exception of the plaintiff, ever claimed any right to the possession thereof. It does not appear that Gregory or any transferee under him or any one for him or for such transferee ever paid any taxes upon any of said rights of way in the District of Columbia, but, on the contrary, it is both stated in the plaintiff's declaration and admitted in the brief of defendant in error (Brief D. E., 15) that said strips of land had been sold for taxes and con-

veyed away to a person named by the Commissioners of the District of Columbia in 1896.

Giving to the plaintiff's testimony the full effect contended for, namely, that it tends to show an entry into possession of the lands in suit by the Southern Maryland Railroad Company during the period of its corporate existence, it is certain that plaintiff, although showing translation of title from said railroad company by adversary proceedings in 1886, introduced no evidence whatever tending to show the course of actual possession thereafter until 1898, when it showed the defendant railroad company to have been in open and notorious possession and use of said lands as part of the railroad properties which it was then operating.

In this view of the case the instruction above complained of was also erroneous, in that the court should have instructed the jury, in the absence of proof of actual ouster of the plaintiff or its grantors by the defendant, it was incumbent upon the plaintiff to show continuous possession on its part and that of its grantors to date of the supposed ouster, or at least that the supposed possession of the Southern Maryland Railroad Company had never been abandoned (Sabariego *vs.* Maverick, 124 U. S., 297; Bradshaw *vs.* Ashley, 180 U. S., 59, 64).

As tending to prove title in itself, as grantee of the Southern Maryland Railroad Company, the plaintiff relied upon the following:

1. A deed from Zane, trustee, to Franklin E. Gregory, dated March 1, 1886, and recorded in the District of Columbia June 7, 1886, purporting to have been made under the authority of the decree of the supreme court of the District

of Columbia above noted, conveying to Gregory, as purchaser "of the mortgaged property directed by said decree to be sold," all the railroad of the Southern Maryland Railroad Company, beginning at Point Lookout, &c., as described in the words of the decree hereinbefore quoted; but said deed does not contain any words expressly descriptive of the lands in suit nor by which the same can be reasonably identified.

2. A certificate of incorporation of the Washington and Potomac Railroad Company, purporting to have been incorporated under the laws of Maryland, dated April 1, 1886, reciting the sale under the decrees of the United States circuit court for the district of Maryland and the supreme court of the District of Columbia foreclosing the mortgage or deed of trust made the first day of January, A. D. 1881, by the Southern Maryland Railroad Company to the Central Trust Company of New York, "as therein provided," to Gregory; the payment of the purchase price by and the conveyance of the property by Zane, trustee, to the latter; the association of Brooks and others with Gregory as incorporators under the Maryland act of 1886 and the purpose of such incorporators to own, possess, maintain, and operate said railroad, describing its termini and route in words similar to those used in the decree above (pp. 42–44).

No incorporation of said company or registration thereof in the District of Columbia was shown.

3. A deed in fee from Gregory to said Washington and Potomac Railroad Company, dated April 1, 1886 (p. 46).

4. A deed of trust or mortgage from Washington and Potomac Railroad Company to the Union Trust Company of Philadelphia, dated April 1, 1886, to secure certain bonds conveying "all the railroad of the Washington and Potomac Railroad Company * * * and all the rights of way and land occupied and used in connection with or for the construction, completion and maintenance of said railroad, its extensions and branches." * * *

NOTE.—This deed is acknowledged by the president and also by the secretary of the grantor as the deed of the corporation, but no authority to either one to so acknowledge it appears either in the deed itself or in connection with it. The deed provides for entry by the trustee in case of default and for sale of the mortgaged property "at public auction at such place in the said city of Baltimore as said trustee may determine, first giving notice of the time and place" by publishing the same in certain newspapers, &c. (R., 53).

5. A deed from Union Trust Company of Philadelphia, trustee, to Washington, Potomac and Chesapeake R. R. Co., dated July 25, 1901, which recites the appointment of the Union Trust Company of Philadelphia as trustee to make sale of the property of the Washington and Potomac Railroad Company by a decree of the circuit court of the United States for the district of Maryland, passed May 22, 1900; the sale of said property to Franklin E. Gregory and others on the 18th day of July, 1900, at the town of Upper Marlboro, in Prince George's county, Maryland; the confirmation of said sale by the said circuit court; the transfer of the rights

of the purchasers by mesne conveyances to the Washington, Potomac and Chesapeake Railroad Company and the order of said circuit court, passed in said cause July 8, 1901, directing said trustee to convey the properties covered by said deed to the purchasers or their grantee, and the conveyance by the Union Trust Company of Philadelphia, trustee, to the Washington, Potomac and Chesapeake Railroad Company of "all the railroad of the said Washington and Potomac Railroad Company, beginning at Point Lookout at the confluence of the Potomac river and the Chesapeake bay in St. Mary's county in the State of Maryland, and running thence through a part of St. Mary's county, Charles county and Prince George's county, Maryland, to the city of Washington, in the District of Columbia, and its extensions and appurtenances * * * and also all the rights of way and land used in connection with, or for the construction, use, and maintenance of said railroad, its extensions and branches" * * * (pp. 64, 65).

6. A certified copy of the articles of incorporation of the Washington, Potomac and Chesapeake Railroad Company, dated July 24, 1901 (p. 61), which recites the decree of the circuit court of the United States for the district of Maryland, dated May 22, 1900, and passed in the cause of The Union Trust Company of Philadelphia against The Washington and Potomac Railroad Company for the foreclosure of the deed of trust (No. 6 above) and the sale of the denounced properties by the said The Union Trust Company, trustee, on July 18, 1900, to Franklin E. Gregory and others; the transfer by Gregory and others to Henry W. Watson; the association by said Watson with himself of William S.

Rooney, John P. Poe, S. Johnson Poe, and Edgar Allen Poe as incorporators "for the purpose of forming a railroad corporation" to acquire the properties so purchased by said *Gregory* and sold to said *Watson* "for the purpose of completing the said railroad and its branches and (for) the equipment and operation thereof."

NOTE.—No evidence was offered tending to prove corporate power in either the Washington and Potomac or the Washington, Potomac and Chesapeake Railroad Companies to acquire or hold property in the District of Columbia, or to own or operate a railroad therein.

From the foregoing documents and transaction, numbered from 1 to 6, considered either alone or together, title or right of possession in or to the lands covered by the declaration in this case could not be ascribed either to the plaintiff below or to any of the various grantors in the deeds of conveyance enumerated, and in the absence of anything further, it is certain that a verdict should have been directed for the defendant.

Assuming that the nine right-of-way deeds, A to I, inclusive, were intended to convey to the Southern Maryland Railroad Company the rights of way in suit, it is not made to appear that said company ever deeded the same to the Central Trust Company as trustee or that they were intended to be covered by the prior trust deed of January, 1881.

In the absence of the pleadings in the Central Trust Company suit and the deed of trust upon which the bill of complaint was founded, the decree for sale passed in that cause should not have been received in evidence, and the general description of the properties therein referred to should not

be helped out by conjecture or inference, particularly as the decree itself makes reference to "said deed or indenture of trust or mortgage" "and to said bill of complaint" "for a full and complete description" of "said mortgaged premises, property rights, assets, and franchises, and every part and parcel thereof."

The defendant below was not a party to the Central Trust Company suit, and consequently cannot be bound by the recitals of the decree or the deed made pursuant to it.

Carver *vs.* Jackson, 4 Pet., at p. 182.

Martindale on Conveyancing, sec. 515, 73.

It is also certain that the deed from the Union Trust Company of Philadelphia should not have been admitted in evidence, for it is expressly declared therein that it was made pursuant to certain decretal orders and decrees passed in a cause pending in a foreign jurisdiction, and in the absence of the record in that cause it could not certainly be disclosed what was before the court or actually decreed by it. The recitals of the deed are not important here except in so far as they show that the grantor trustee in executing the same was acting under the powers conferred upon it by the United States circuit court for the district of Maryland and was not acting in the exercise of the general powers conferred upon it by the deed of trust which was recorded in this District. Nor will it do to say that although the decree under which the sale and deed of conveyance were made was not intended to pass the lands in controversy, nevertheless the deed itself must be held to have passed the title to such properties to the grantee, because the Union Trust Company, in its capacity as trustee named in the deed of trust from the Wash-

ington and Potomac Company, held the title to all lands of that company, as well those in the District of Columbia as those in Maryland, and its grantee had recorded it in this District, wherein lie the lands which said grantee coveted. The argument of defendant in error upon that point comes to this—that if a man hold title as trustee to lands lying in the District of Columbia, and also to other lands lying in Maryland, all under the same deed, and he makes sale of the lands in Maryland and conveys the same in general terms, he will be held to have divested himself of title to the District of Columbia lands if, forsooth, the grantee of the Maryland lands does but record his deed in said District. This cannot be the law. It seems plain that unless the intention of the grantor to convey the District of Columbia lands can be derived from the terms of the conveyance by which he may have acted, they will not pass.

The case of Williams *vs.* Jackson, 109 U. S., 478, upon which the defendant in error relies, is not in point, for there the trustee in whom was vested the legal title to the lands in dispute intentionally conveyed the same away, and the fact that he wrongfully conveyed it contrary to the trust reposed in him was held not to affect the power of conveyance itself.

In the case at bar the limitation of the grantor's powers, as well as the scope of its intention, is clearly defined by the recitals of the trust deed, and with no less certainty is the capacity in which the grantor was acting declared therein, and yet because the grantee named in said deed caused it to be recorded in the District of Columbia this court is asked to hold that said grantee thereby became entitled to take and hold

said lands, although they were not comprehended by the decree under which the grantor acted, nor intended to be conveyed thereby, the title to the lands in the District being vested in the grantor in a capacity different from that in which it purported to be acting when conveying the Maryland lands.

Titcomb *vs.* Currier, 4 Cushing, 591.
Devlin on Deeds, sec. 455.
Hitz *vs.* Jenks, 185 U. S., 155.
Batchelor *vs.* Brereton, 112 U. S., 396, 404.
Bank *vs.* Rice, 4 How., 225.

By the act of January 26, 1887 (Abert's Compiled Stats., section 66, p. 533), which was the law in force in this District in 1896, when these conveyances were made, it is provided that a deed to a purchaser at a tax sale conveys "a good and valid title" and "shall be presumptive evidence in all controversies * * * that such taxes were not paid, that the property was not redeemed before the execution of the deed, and that the manner of levy, notice, sale, and other prerequisites of law were complied with necessary and proper to make such deed and title valid."

By the act of February 28, 1898 (2 Suppl. R. S., p. 730), such deeds are made *prima facie* evidence of a good and perfect title in fee-simple.

Counsel for appellee contended that the references to these tax deeds was unnecessarily set forth in the declaration, and the averments should be rejected as surplusage. It may be true that they were unnecessarily set out in the declaration, but the existence of such outstanding deeds having been disclosed, they cannot be disregarded as mere surplusage.

Such references constitute solemn admissions and declarations against interest made by the plaintiff in the course of a judicial proceeding.

The plaintiff, unnecessarily perhaps, but with the utmost precision, nevertheless, has set up a vital weaknes in the title by which it claimed the greater portion of the property sought to be recovered. It was bound to remove the difficulty so raised before calling upon the defendant to assert its title.

It is well settled that the defendant in an action of ejectment may avail himself of a weakness in the plaintiff's title without asserting his own (Simmons *vs.* Wagoner, 101 U. S., 260, 262), and that the defendant may defeat the plaintiff's right to recover in ejectment by showing an outstanding legal title in other parties (Hanrick *vs.* Patrick, 119 U. S., 156). *A fortiori*, he may defeat the plaintiff by an admission made in his or its pleadings showing the existence of an adverse outstanding title in another.

It is the law of Maryland, in force in the District of Columbia, that in order to maintain an action of ejectment where the plaintiff relies upon title he must show that he has both the right of possession and the legal title to the land in dispute, and to establish the latter he must trace his title back to the State or to the United States or other primary source, unless both parties are claiming title from a common source.

Mitchell *vs.* Mitchell, 1 Maryland, 44.

Anderson *vs.* Smith, 2 Mackey, 275.

Peck *vs.* Heurich, 6 App. D. C., 283.

In the absence of title in either party, if the plaintiff rests his right to prevail upon prior possession he must show either an actual ouster by defendant on the day named or that the asserted prior possession had been continuous and had not been abandoned.

Bradshaw *vs.* Ashley, 180 U. S., 59.

And in such case the possession relied upon must be clearly and unequivocally made out.

Lea *vs.* Hernandez, 10 Texas, 137.

And it must appear to have been substantial, and not casual or sporadic.

In the case at bar the plaintiff pretends to rely upon a record title and alleged prior possession by the Southern Maryland Railroad Company. By failing to show that Dean and the other grantors in the remaining deeds to the Southern Railroad Company had either actual possession or record title to the lands or rights of way in suit traced back to the State or other primary source of title, plaintiff is in no better position than if it relied on prior possession alone, for possession, peaceable and continuous, gives rise to a presumption of title. But in the absence of proof of title or of actual ouster by defendant a plaintiff, relying upon prior possession alone, must sustain the burden of showing that such possession has been continuous, or at least that it has not been abandoned. Claiming through mesne grantors, such a plaintiff can not take the benefit of the conveyances to and from such mesne grantors without also assuming the burdens of the acts, both of omission and commission, on their part.

In the absence of any proof of possession in Dean and the other grantors to whom plaintiff seeks to trace its so called title as a primary source, it was incumbent upon the plaintiff, who sought to oust the defendant from its open and notorious and peaceable possession of the rights of way in suit, extending over a period of more than five years, to prove not only actual entry into possession by the Southern Maryland Company, but also that such possession had been continuously maintained either by said company or those claiming under or through it until about the time of the alleged ouster. At the time of the alleged transfer of title to plaintiff the defendant was and for several years had been in full possession of the objects of dispute, and such possession was notice to said plaintiff that defendant presumably claimed title to the same in fee. As was said by this court in Bradshaw *vs.* Ashley (180 U. S., 59): "Generally speaking, the presumption is that the person in possession is the owner in fee. If there be no evidence to the contrary, proof of possession, at least under a color of title, is sufficient proof of title."

But, as was also said by Mr. Justice Matthews, speaking for this court in Sabariégo *vs.* Maverick (124 U. S., 261):

"The maxim that the plaintiff must recover upon the strength of his own title, and not on the weakness of the defendant's is applicable to all actions for the recovery of property. But if the plaintiff had actual prior possession of the land, this is strong enough to enable him to recover it from a mere trespasser who entered without any title" * * * but "in the language of the supreme court of Texas in Wilson *v.* Palmer, 18 Texas, 592, 595, 'the evidence must show a continuous possession, or at least that it was not abandoned, to entitle the plaintiff (p. 298) to recover merely by virtue of such possession.'

"That is to say, the defendant's possession is in the first

instance presumed to be rightful. To overcome that presumption the plaintiff, showing no better right by a title regularly deduced, is bound to prove that, being himself in prior possession, he was deprived of it by a wrongful intrusion by the defendant, whose possession, therefore, originated in a trespass. This implies that the prior possession relied on by the plaintiff must have continued until it was lost through the wrongful act of the defendant in dispossessing him. If the plaintiff cannot show an actual possession, and a wrongful dispossession by the defendant, but claims a constructive possession, he must still show the facts amounting to such constructive possession. If the lands, when entered upon by the defendant, were apparently vacant and actually unoccupied, and the plaintiff merely proves an antecedent possession, at some prior time, he must go further and show that his actual possession was not abandoned; otherwise he cannot be said to have had even a constructive possession (p. 298).

"It therefore appears that prior possession is sufficient to entitle a party to recover in an action of ejectment only against a mere intruder or wrongdoer or a person subsequently entering without right.

"Another qualification of the rule is, that the action to regain the prior possession must be brought within a reasonable time after it has been lost. If there has been delay in bringing the suit, the *animus revertendi* must be shown and the delay satisfactorily accounted for, or the prior possessor will be deemed to have abandoned his claim to the possession. Thus in *Whitney v. Wright*, 15 Wendell, 171, it was held that, where there was a prior possession of eleven years, and then an entry by the defendants claiming under a title adverse to such possessory title, the omission to bring a suit for thirteen years, with knowledge of the adverse entry and continuance of possession under it, would authorize a jury to find an abandonment of claim by the prior possessor" (pp. 299–300).

* * * * * * *

"It follows that in cases where the proof on the part of the plaintiff does not show a possession continuous until actual dispossession by the defendant, or those under whom he claims, the burden of proof is upon the plaintiff to show that his prior possession had not been abandoned" (p. 300).

* * * * * * *

Applying these principles to the case then before the court, the opinion concludes as follows:

"The question is presented upon the whole testimony as offered, taken in connection with the documents read, whether the plaintiffs had thereby presented such a case as, in the absence of all other testimony, would have justified a verdict in their favor. The evidence on the subject contained in the depositions did not tend to establish any possession of the premises in dispute later than the year 1835. At that time Garcia himself had died, his daughter had married in the year 1833, and from the year 1835 the mother and daughter, with the husband of the latter, had left Texas and gone into Mexico, where they have ever after remained. There is no evidence whatever that after the year 1835 they exercised any dominion or control over this property in San Antonio, or were in possession of it through tenants or agents. The proof, therefore, does not satisfy the rule as stated by the authorities cited, for, although it shows that the possession on the part of the plaintiffs had been originally acquired under color of title, it does not show that that possession had been continuous and had not been abandoned. On the contrary, so far as the proof extends, it leaves a period of time, from 1835 to 1843, when, it is alleged in the petition, that the defendants, or those under whom they claim title, entered into possession, entirely unaccounted for, and during which, so far as the plaintiffs are concerned, the possession appears to have been vacant and abandoned" (p. 301).

The principles of decision declared in that case have never been in the slightest degree modified or narrowed and were expressly reaffirmed in the case of Bradshaw *vs.* Ashley (180 U. S., 59, 64), the court distinguishing the latter case from the former by saying "that all that the nature of the case admitted (of) in order to show actual and continuous possession and claim and acts of ownership had been proved and claimed in regard to the property by the plaintiff." * * *

In the case at bar the alleged possession by the Southern Maryland Railroad Company, if any there was, rests upon shadowy and not clear and unequivocal proof. If it had possesion, it is not shown to have surrendered or transferred it to any person or corporation. No one of the mesne vendors is shown ever to have been in possession or to have asserted any claim thereto, and the status of the rights of way as to their actual use or possession from 1886 to 1898 is entirely unaccounted for. It is not shown that any one person or corporation exercised acts of dominion thereover during such years or paid taxes assessed against them. On the contrary, as above stated, it appears from the declaration of the plaintiff, and is admitted by its attorneys in their brief filed in this cause, that the property rights therein, whatever they were, were sold for non-payment of taxes, and deeds were issued therefor to the purchasers at such sales in 1896.

During the period prior to 1898 the parcels of land appear neither to have been enclosed nor occupied nor used by any person or corporation, and the mere presence thereon of unused railroad tracks, so far from giving notice of possession, but emphasized the fact of abandonment.

From the showing made it would be difficult to escape the presumption of abandonment, and plaintiff has shown no such equity in the premises as might be expected to induce the court to view the delinquences of its so-called predecessors in title with a lenient eye.

In the absence of explanation it would appear from the record that the plaintiff corporation was conceived and organized solely for the purpose of instituting this suit. Neither it nor those under whom it claims appear to have

expended a dollar upon the rights of way in suit nor in any attempt to fulfill the conditions of the charters under which its existence and its excuse for being is claimed.

Upon the whole record it is submitted that there was reversible error in the rulings of the trial justice in refusing to direct a verdict for the plaintiff in error and in the admission in evidence of the decree in the suit of the Central Trust Company and the deed from the Union Trust Company.

Defendant's possession, both at the origin of plaintiff and at the institution of the suit, having been established by plaintiff's witnesses, it was entitled to rely upon the presumption that until proved otherwise its possession was lawful and was accompanied by title. To overcome this presumption it was necessary for plaintiff not only to show plainly and distinctly the prior possession by the Southern Maryland Railroad Company, but also that such possession had been continuous and had not been abandoned prior to the alleged ouster and entry into possession on the part of defendant.

Sabariego *vs.* Maverick, 124 U. S., 261.
Akin *vs.* Byrd, 153 Pennsylvania, 23.
Wilson *vs.* Palmer, 18 Texas, 592.

In Sabariego *vs.* Maverick the plaintiff claimed the right of possession by virtue of the indubitable possession of her ancestor, and no attempt was made by either party to establish any alienation, voluntary or otherwise, by said ancestor of the property in dispute, but, the plaintiff being unable to show affirmatively that the possession of the ancestor had been continuously maintained to the date of the alleged

ouster by defendant, a period of eight years only being unaccounted for prior to defendant's intrusion, plaintiff's right to prevail in her action was denied.

In the case at bar it is to be noted that the deeds from Dean and others to the Southern Maryland Railroad Company were of the described rights of way so long only as they should be used for railroad purposes. No evidence was introduced tending to show that said company or its successors or assigns, if any there were, ever used said rights of way for railroad purposes. It does not certainly appear that said company ever performed any work of construction thereon or in connection therewith. Assuming that the tracks referred to by Hazen were laid by said company or at its behest, no evidence was offered tending to prove that they had ever been used by said Southern Maryland Company or any of plaintiff's mesne grantors for any railroad purpose at any time whatever. It would seem that if any case could ever arise for the application of the rule announced in Sabariego *vs.* Maverick and reiterated in Bradshaw *vs.* Ashley, *ubi supra*, imposing upon the plaintiff in ejectment the necessity of sustaining the burden of proving not only actual possession in its ultimate grantor, but also that such possession had been continuous and not abandoned, this case was it.

In this connection the following is well worthy of consideration: The act of Congress of June 27, 1882, authorizing the "Southern Maryland Railroad Company to extend a railroad into and within the District of Columbia," provided that said company was authorized "to exercise the same powers, rights, and privileges and was subject to the same

restrictions, in the extension and construction of their said railroad into and within the said District," as then appertained to railroad companies "organized under the general laws in force for the incorporation of railroad companies in the District of Columbia." The general laws so referred to are to be found in sections 618 *et seq.* of the Revised Statutes of the United States relating to the District of Columbia.

Section 618 thereof required railroad companies organized under such laws to file their articles of association in the clerk's office of the recorder of deeds of the District and to record a copy thereof in a book kept for that purpose.

It is not shown that the Southern Maryland Railroad Company did either.

Section 619 provided that—

"Upon filing the articles of association in accordance with the provisions of the preceding section, the * * * body politic and corporation * * * shall be capable of suing and being sued * * * and shall be capable in law of purchasing, holding, and conveying any real or personal property whatever necessary for the construction of such road and for the erection of all necessary buildings and yards and appurtenances for the use of the same."

In the absence of any showing that said Southern Maryland Railroad Company had complied with the statutory requirement of so filing its articles of association, there is no presumption that it was either capable in law of purchasing, holding, or conveying any real estate in the District of Columbia.

By section 642 every such corporation which had complied with the preceding requirement obtained the right to cause examinations and surveys for the proposed railroad to be

made and to purchase "all such lands and real estate" as may be necessary for the purposes of said railroad," &c., &c., to lay out its road and to construct the same.

Section 644:

"Every such company, before constructing a part of its road, shall make a map and profile of the route intended to be adopted, which shall be certified by a majority of the directors, and filed in the office of the recorder of deeds of the District, for the inspection and examination of all parties interested."

Section 664:

Such company may from time to time borrow such sums of money as they may deem necessary for completing or operating their railroad, and issue and dispose of their bonds for any amounts so borrowed. * * * But such corporation shall not have power to issue any bonds or execute any mortgages upon its property or franchises until at least one-half of the capital stock shall have been fully paid."

Section 665:

"Every such corporation shall make an annual report to the clerk of the supreme court of the District of the operations of the year ending on the first day of January, which shall be verified * * * and shall state—

"First. The capital stock and the amount actually paid in.

"Second. The amount expended for the purchase of lands, for the construction of the road," &c., &c.

It does not appear from this record that said Southern Maryland Railroad Company ever complied or attempted to comply with any of the requirements of said general laws, and in the absence of some such showing it would seem that no presumptions should be indulged in favor of the plaintiff,

who is asserting the right to maintain this action and to recover the lands in suit by virtue of being possessed of the rights, powers, and privileges possessed by the said Southern Maryland Company. If it does possess such powers and privileges, it is also bound by the restrictions of the general laws in force in the District of Columbia at the time it is supposed to have availed itself of the provisions of the act of Congress of 1882.

It is a mistake to say that plaintiff claims as a grantee or vendee of the Southern Maryland Railroad Company, or that the possession of the latter, if any it had, inured to the former. The fact is that both Gregory and the Washington and Potomac R. R. Co. acquired whatever title it possessed by virtue of adversary proceedings against said Southern Maryland Railroad Company, and so the plaintiff itself acquired whatever title it possesses by virtue of adversary proceedings against the Washington and Potomac R. R. Co.

A plaintiff claiming under a judgment grantee must be able to show prior possession in himself to recover from a defendant in actual possession (Greenleaf *vs.* Brooklyn, &c., Co., 141 N. Y., 395), and this rule would seem to be also applicable to the case of a vendee at foreclosure sale.

The trial court erred in entering judgment in favor of plaintiff for both the possession of the strips of land or rights of way and the improvements thereon, because—

1. No question as to the ownership of the improvements, being the ties and rails forming the tracks of the defendant company, was in issue or submitted to the jury, and the verdict of the jury was for the possession alone.

2. In Wiggins Ferry Co. *vs.* Ohio and Mississippi Ry. Co., 142 U. S., 396, 415, this court held that improvements, such as rails and cross-ties, upon a railroad right of way do not follow the possession of the land or right of way itself.

The judgment under review should be reversed.

FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Plaintiff in Error.

CHRONOLOGY.

1868, March 20. Charter of Southern Maryland Railroad Company by Legislative Assembly of Maryland.

1881, January 1. Deed of trust from Southern Maryland Railroad Company to the Central Trust Company of New York.

1882, June 27. Act of Congress authorizing the Southern Maryland Railroad Company to extend a railroad into and within the District of Columbia.

1884, June–December. Right of way deeds from Dean and others to the Southern Maryland Railroad Company.

1885, September 1. Supreme court of District of Columbia passed decree of foreclosure and sale in case of The Central Trust Company of New York against The Southern Maryland Railroad Company; Anthony M. Zane appointed trustee to make sale.

1886, January 18. Trustee's report of sale; made January 13, 1885, filed.

1886, March 1. Trustee's report of sale ratified and confirmed by the court.

1886, March 9. Deed from Anthony M. Zane, trustee, to Franklin E. Gregory.

1886, April 1. Certificate of incorporation, under the laws of Maryland, of the Washington and Potomac Railroad Company.

1886, April 1. Deed from Gregory to Washington and Potomac Railway.

1886, April 1. Deed of trust from Washington and Potomac Railroad Company to Union Trust Company of Philadelphia.

1901, July 24. Certificate of incorporation of Washington, Potomac and Chesapeake Railroad Company. This certificate refers to decree of United States circuit court for district of Maryland, passed May 22, 1900, directing foreclosure and sale of Washington and Potomac property; sale thereof by Union Trust Company, trustee, to Franklin E. Gorgory July 18, 1900; confirmation of said sale by said United States district court June 8, 1901, and acquisition of all rights, &c., in said property by Henry W. Watson.

1901, September 21. Deed from Union Trust Company of Philadelphia, trustee, to Washington, Potomac and Chesapeake Railroad Company; recorded in District of Columbia same date.

1902, January 13. Declaration in ejectment in present suit filed.

FILE COPY.

Office Supreme Court U. S.
FILED
AUG 11 1904
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1904

No. ~~372~~ 35.

THE CHESAPEAKE BEACH RAILWAY COMPANY, PLAINTIFF IN ERROR,

against

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY, DEFENDANT IN ERROR.

BRIEF AND ARGUMENT IN BEHALF OF DEFENDANT IN ERROR

CHARLES POE,
SAMUEL A. PUTMAN,
Attorneys and Counsel for Defendant in Error.

THE CRANE CO., SCND BUILDING

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE CHESAPEAKE BEACH RAILWAY COMPANY,
Plaintiff in Error,

AGAINST

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY,
Defendant in Error.

No. 273.

MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM THE JUDGMENT OF THE COURT BELOW.

Now comes the said Washington, Potomac and Chesapeake Railroad Company, the defendant in error herein, by its counsel appearing on its behalf and moves the Court on the record herein:

FIRST.—To dismiss the writ of error herein for the want of jurisdiction in this Court.

SECOND.—To affirm the judgment of the Court of Appeals, District of Columbia, the review of which is sought by the writ of error herein, upon the ground that

the rulings, decision and judgment of the Court of Appeals, District of Columbia, are obviously correct, and upon the further ground that it is manifest, the writ of error herein was taken for delay only, and the question upon which the jurisdiction depends is so frivolous as not to need further argument.

Respectfully submitted,

CHAS. POE,
SAMUEL A. PUTMAN.
Counsel for the Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

THE CHESAPEAKE BEACH RAILWAY COMPANY, Plaintiff in Error, AGAINST THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY, Defendant in Error.	No. 273.

SIRS:

Please take notice that the defendant in error in the above-entitled action will, on the 10th day of October, 1904, between the hours of 12 o'clock, noon, and 1 o'clock P. M., or as soon thereafter as counsel can be heard at the Supreme Court Room in the City of Washington, District of Columbia, move this Court on the record herein:

FIRST.—To dismiss the writ of error herein for the want of jurisdiction in this Court.

SECOND.—To affirm the judgment of the Court of Appeals, District of Columbia, the review of which is sought by the writ of error herein, upon the ground that the rulings, decision and judgment of the Court of Appeals, District of Columbia, are obviously correct, and upon the further ground that it is manifest, the writ of error herein was taken for delay only, and the question upon which the jurisdiction depends is so frivolous as not to need further argument.

Together with this motion the defendant in error serves upon said plaintiff in error a copy of his brief, to be filed in the Supreme Court in support of the said motion.

Dated, Washington, August 3, 1904.

Very respectfully yours,

CHAS. POE,
SAMUEL A. PUTMAN.
Attorneys and Counsel for
Defendant in Error,
1416 F Street, N. W.,
Washington, D. C.

To
FREDERICK D. MCKENNEY and
JOHN S. FLANNERY,
Attorneys and Counsel for Plaintiff
in Error.

Due and timely service of the notice of motion of which the within is a copy is hereby admitted.

Dated, August 3, 1904.

F. D. MCKENNEY,
J. S. FLANNERY,
Attorneys and Counsel for the
Plaintiff in Error.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904. No. 273.

THE CHESAPEAKE BEACH RAILWAY COMPANY,
Plaintiff in Error,

AGAINST

THE WASHINGTON, POTOMAC AND CHESAPEAKE RAILROAD COMPANY,
Defendant in Error.

Motion to Dismiss Writ of Error to Court of Appeals, District of Columbia,
also
Motion to Affirm Judgment of the Court of Appeals, District of Columbia.

BRIEF AND SUGGESTIONS IN SUPPORT OF MOTIONS BY DEFENDANT IN ERROR.

1. To dismiss the writ of error herein for the want of jurisdiction in this Court.

2. To affirm the judgment of the Court of Appeals, District of Columbia, the review of which is sought by the writ of error herein, upon the ground that the rulings, decision and judgment of the Court of Appeals, District of Columbia, are obviously correct, and upon the further ground that it is manifest, the writ of error herein was taken for delay only, and the question upon which the jurisdiction depends is so frivolous as not to need further argument.

FIRST; AS TO THE MOTION TO DISMISS FOR THE WANT OF JURISDICTION.

STATEMENT AND POINTS.

The writ of error in this cause has been sued out by the plaintiff in error to have a judgment of the Court of Appeals, District of Columbia, in an action of ejectment reviewed and revised.

The present motion to dismiss the writ of error is upon the ground that it affirmatively appears upon the face of the record that the "matter in dispute, exclusive of costs, does not exceed the sum of five thousand dollars."

This is simply an action of ejectment brought for the recovery of the possession of nine strips of land only sixty-six feet wide. There is no claim for mesne profits. The only evidence of the value of the land is that contained in the deeds to it found on pages ten to twenty-nine of the record, which recite considerations for the purchase of the nine strips aggregating only three thousand six hundred and forty-nine dollars ($3,649.00). It may be, that, taken in connection with other land, not in dispute, the *locus in quo* (*"the matter in dispute"*) might at sometime be worth many times the amount necessary to confer jurisdiction upon this Court on writ of error to the Court of Appeals, District of Columbia, but the same might be said of any property anywhere: and the Court in determining its jurisdiction looks not at the remote, ulterior or contingent effect of its judgment, but whether it has the right to enterain jurisdiction and render any judgment at all.

Grant *v.* McKee, 1 Peters, 248.
Farmers' Bank *v.* Hoof, 7 Peters, 168.
Ross *v.* Prentiss, 3 Howard, 771.
Troy *v.* Evans, 97 U. S., 1.
Elgin *v.* Marshall, 106 U. S., 578.
New Jersey Zinc Co. *v.* Trotter, 108 U. S., 564.

Opelika City *v.* Daniel, 109 U. S., 108.
Bruce *v.* Manchester & Keene R. R., 117 U. S., 514.
Gibson *v.* Shufeldt, 122, U. S., 27.
New England Mtge. Co., *v.* Gay, 145 U. S., 123.
Hollander *v.* Feckheimer, 162 U. S., 326.
Willis *v.* Eastern Banking Co., 167 U. S., 76.

The plaintiff in error (defendant) stood mute at the trial below, offering no evidence either as to the value of the property in dispute or as to its right to occupy it, ignoring the rights of the then plaintiff and defying it, although the Code of the District of Columbia provides that proof of the value of the property in dispute may be offered in actions of ejectment.

Code District of Columbia, Sects. 1003-1010.

Where the value of the property in dispute is an issuable fact, this Court will not sit to weigh the value of the opinions of experts shown by *ex parte* affidavits and counter affidavits, but will dismiss the writ of error, unless, upon the face of the record, it appears that the amount in dispute is large enough to confer jurisdiction.

Red River Cattle Co. *v.* Needham, 137 U. S., 632.

It is very likely that application will be made to the Court by the plaintiff in error for leave to file affidavits as to the value of the property in dispute, and it is respectfully submitted that, in this case, such leave should not be granted. As stated above, this is an action of ejectment to recover the possession of certain strips of land in the District of Columbia, and in order that even and exact justice and equity between the

parties may be had in such a proceeding, the statutes applicable to that jurisdiction in such an action specifically provide that proof of the value may be offered in evidence and taken into consideration by the jury in making up its verdict, and the Court in rendering its judgment. The defendant in this action at the trial in the lower court, before the jury, elected not to avail itself of such right and was content to offer no proof upon any subject. It is therefore respectfully submitted that having made its election, it is bound by it, and it is too late for it now, in this Court, for the first time during the progress of this entire litigation, to seek the privilege of correcting its error by supplementing the record by *ex parte* affidavits of value, in a vain attempt to eke out the jurisdiction of this Court on a writ of error. Such is not the practice of this Court and would lead, if it were tolerated, to great abuse, confusion and delay. The granting of such an application to the plaintiff in error would naturally and inevitably result in a similar application on behalf of the defendant in error, would necessarily require the examination of the affidavits and counter-affidavits by this Court, and convert it into a jury to pass upon the value of real estate, upon expert testimony, so called, at best the most unsatisfactory of all the classes of evidence.

A somewhat similar question was passed upon by the Court in the case of the Red River Cattle Company *v.* Needham, 137 U. S., 632, in which case the Court dismissed a writ of error to the Circuit Court of the United States for the Northern District of Texas, where that court referred the question of the value of real estate involved to this court upon affidavits and counter-affidavits of expert witnesses, although such affidavits were made a part of the record sent up therein for review by this court. In that case Mr. Chief Justice Fuller, in delivering the opinion of the Court, reviews

all the authorities, and the Court determined that it was bad practice to permit such affidavits to be filed.

> Red River Cattle Company *v.* Needham, 137 U. S., 632.

The statute requires that the amount in dispute, exclusive of costs, must exceed Five Thousand Dollars on Appeal or Writ of Error to the Court of Appeals, District of Columbia:

> Code District of Columbia Sect. 233.

This is a writ of error to the Court of Appeals, District of Columbia, and, it is submitted, should therefore be dismissed for the want of jurisdiction.

SECOND: MOTION TO AFFIRM.

The defendant in error brought its action of ejectment against the plaintiff in error and obtained a verdict and judgment against it for the land described in the declaration and judgment; upon appeal to the Court of Appeals this judgment was affirmed. This writ of error is to review that judgment.

At the trial the defendant in error offered in evidence proof of its own corporate existence, franchises and powers, and the incorporation, franchises and powers of other corporations which it succeeded, deeds to the Southern Maryland Railroad Company (one of such corporations) to each of the tracts of land set out in the various counts of the declaration, a deed conveying to it all of the property so acquired by said Southern Maryland Railroad Company, the entry into possession by said Southern Maryland Railroad Company of the said various tracts of land and the exercise of acts of ownership thereupon and the ouster of the defend-

ant in error by the plaintiff in error from the lands in question, and the occupation thereof by the plaintiff in error. The defendant in error thereupon closed its case, and the plaintiff in error moved the court to direct a verdict in its favor, which motion the Court denied.

The plaintiff in error then announced that it had no evidence to offer and the Court then granted a prayer offered by the defendant in error and also charged the jury as to the law applicable to the proof in the case (record pp. 72-73). The plaintiff in error excepted to the denial of its motion, to the granting of the defendant in error's prayer and to the Court's charge, and the action of the Court in these particulars is now here for review.

The reasons assigned by attorneys for the plaintiff in error for its application to the Court to peremptorily instruct the jury to render its verdict for the defendant are five in number, are to be found on page seventy-four of the record, and it is presumed will be the grounds urged before your Honors as errors—they are:

> "1. That plaintiff had not shown title to or possession of the lands covered by the deeds to the Southern Maryland Railroad Company lettered from "A to I" inclusive to have been in the several grantors named in said deeds or any of them."
>
> "2. That plaintiff had failed to show continued possession of said lands by said Southern Maryland Railroad Company or its grantees or legal successors in interest from or about the dates of said respective deeds to the time of the alleged ouster by defendant."
>
> "3. Plaintiff had wholly failed to show that either it or its immediate grantors had ever been in possesion of the property in controversy or that any ouster of plaintiff or its said grantors by defendant or others had ever in fact occurred."

"4. That plaintiff had in and by various counts of its declaration filed in this cause disclosed an outstanding record title to various parcels of the described lands other than that disclosed by the deeds and instruments under which plaintiff claimed the right to the possession of said lands."

"5. That plaintiff had failed to show that the legal title to the various tracts of land in question had in fact vested in it by virtue of the various deeds of conveyance given in evidence."

Before proceeding to the discussion of the questions arising from these objections it is proper to state that the action is brought to recover the land bought by the Southern Maryland Railroad Company many years ago, and to which it acquired title under the various deeds to it offered in evidence by the defendant in error. There were nine of these tracts of land each sixty-six feet wide, adjoining each other and each of which is described in separate count of the declaration.—The deeds to the Southern Maryland Railroad are in the record from page 10 to page 29 inclusive.—The defendant in error claims that upon the execution and delivery of these deeds to the Southern Maryland Railroad Company it constructed its railroad upon the property in controversy having taken possession of it under said deeds for such purpose; that the defendant in error is the successor in title, interest, estate and possession of the Southern Maryland Railroad by virtue of the following claim of title—to wit, a deed of trust by the Southern Maryland Railroad Company of all its property and franchises, a forfeiture and sale under a decree based upon that deed, a ratification of that sale and a deed by Anthony M. Zane, the trustee named in the decree, to the Washington and Potomac Railroad Company, a deed of trust by it to the Union Trust Company of Philadelphia, trustees, duly recorded in the District of Colum-

bia, a default under that deed of trust and a deed by the Union Trust Company, trustee, and others to the defendant in error. The acts of possession by the Southern Maryland Railroad Company relied upon by the defendant in error and the identity of the land conveyed to it with that described in the various counts of the declaration are testified to by the witnesses Hazen and Meigs (Record pp. 70-72)—The property in controversy lies wholly within the District of Columbia. A plat showing the property was exhibited, proved and identified at the trial, and, by stipulation of counsel, is to be referred to at the argument, and the plat recorded with and made a part of each of the deeds was also exhibited and identified.

The first two objections made by appellants to the sufficiency of the proof offered by the appellee (Record p. 74) are intended to invoke the application of the rule that in ejectment the plaintiff must recover upon the strength of its own title and not upon the weakness of that of the defendant. Your Honors will remember that in this case the defendant in error makes no claim or pretension of any title, or even color of title, does not even make an opening statement of its case to the jury, but insists that it is necessary, as against it, for the defendant in error to do more than show a deed to its predecessor followed up by an entry into possession thereunder, and, in effect, that even as against a trespasser and intruder, it is necessary for a plaintiff in ejectment to go to the trouble and expense of tracing its title back to a patent. This we respectfully submit never was the law anywhere. The same argument was made in Bradshaw *v.* Ashley (14 App., 485) where this court refused to apply such rule to facts quite similar to those in the case at bar. Upon appeal the judgment and opinion of this Court was affirmed by the Supreme Court of the United States.

Bradshaw *v.* Ashley, 180 U. S., 59.

In the above case (14 Appeals D. C., 486), Mr. Justice Morris, speaking for the Court, quotes (page 505) from the opinion of Mr. Justice Curtis in *Christy* v. *Scott*, 14 Howard, 292:

> "According to the settled principles of the common law this is no defence to the action. The plaintiff says that he was seized in fee, and that the defendant ejected him from the possession. The defendant, not denying this, answers that if the plaintiff had any proper title it was under a grant which was not valid. He shows no title in himself. But a mere intruder can not enter upon a person actually seized and eject him, and then question his title, or set up an outstanding title in another. The maxim that the plaintiff must recover on the strength of his own title and not on the weakness of the defendant's is applicable to all actions for the recovery of property. But if the plaintiff had actual possession of the land, this is strong enough to enable him to recover it from a mere trespasser who entered without any title. He may do so by a writ of entry, where that remedy is still practiced. *Jackson* v. *Boston & Worcester R. R.* 1 Cush. (Mass., 575); or by an ejectment. *Allen* v. *Rivington* (2 Saunders, III.), *Doe* v. *Read* (8 East, 356), *Doe* v. *Dybolt* (1 Mo. & M., 346), *Jackson* v. *Hagen* (2 Johns, N. T., 171). This rule is founded upon the presumption that every possession peaceably acquired is lawful, and is sustained by the policy of protecting the public peace against violence and disorder." To the same effect are

> "Sabariego *v.* Maverick, 124 U. S., 296,
> Smith *v.* Lorillard, 10 Johns, 338, 356,
> Asher *v.* Whitlock, L. R. 12, Q. B., 1,
> Jackson *v.* Rightmyre, 16 Johns, 313.

In the present case the defendant in error produced the deeds to the Southern Maryland Railroad Company, and

offered evidence of the acts of possession, under these deeds; this, we respectfully submit, would have been sufficient, in the absence of any proof of title by the defendant, to entitle the plaintiff to a verdict, but the learned judge in the lower court (out of abundant caution) submitted the question of possession to the jury as a question of fact, and the jury found such actual possession in fact.

It is taken for granted that the third objection (Record p. 74) is intended to present more directly the question of possession *in fact by the defendant in error,* and possibly the question of the identity of the land proved to have been taken by the defendant with that set out in the declaration. If this be the object, we respectfully submit that the possession of the Southern Maryland Railroad Company is the possession of its grantee, the defendant in error, in the absence of any evidence of abandonment, of which there is no pretense; and that as to identity the plats taken in connection with the testimony of the witnesses Hazen and Meigs, the only witnesses in the case (Record pp. 70-71), establish this identity beyond dispute. But even if the *locus in quo* as set forth in the declaration were not identical with that shown by the proof, the defense should have been interposed by disclaimer and can not be taken under the general issue plea of "not guilty."

> Crandall *v.* Lynch, 20 D. C. App., 73.
> Greer *v.* Metzger, 24 Howard, 168, 277.

The defendant in error produced the various deeds referred to in the several counts of its declaration and the accompanying plats showing the full extent of its claim. The defendant offered no proof under a plea of "not guilty."

> "How can it call on the plaintiff to prove how much it, the defendant, demands, or the jury to

find a separate verdict as to its separate holdings, when it will neither by its pleadings nor evidence signify how much it demands?"

Greer *v.* Metzger, 24 Howard, 268, 277.

As to the fourth objection (Record p. 74), that various counts of the declaration showed an outstanding record title to various parcels of the described lands other than that disclosed by the deeds under which defendant in error claimed the right to the possession of said lands. It will be contended not very seriously, we believe, that because defendant in error in its declaration referred for purposes of description to the name and place of record of certain tax deeds, in addition to the date and place of record of the deeds to the Southern Maryland Railroad, under which it claimed, thereby giving to the plaintiff in error more notice than it could have hoped for, the defendant in error can not recover as to said counts. The defendant in error naturally supposed that the plaintiff in error would claim under at least some semblance of a paper title, and would not have been surprised if the defence had been based upon these very deeds—in fact was surprised that it was not. These deeds were not offered in evidence, were not part of the defendant in error's or anybody else's case, so far as the proof shows, and the reference to them in a few of the counts of the declaration was mere surplusage, hurt nobody and was alluded to by nobody at the trial, but only when the motion for new trial was heard. There was no suggestion about it to the Court by counsel for plaintiff in error, no reference to it in the Court's charge, and no such deeds as indicated, were offered, or even tendered in proof.

The fifth and last ground assigned at the hearing below is in the following words "That plaintiff had

failed to show that the legal title to the tracts of land in question had in fact rested in it by virtue of the various deeds of conveyance given in evidence."

Of course if the defendant in error was in possession of the land at the time of the ouster by the plaintiff in error, and the plaintiff in error, without any title, entered upon said land as a mere trespasser, it makes no difference whether the plaintiff's title is good or bad; its possession, as we have endeavored to show, would be sufficient to maintain this action. But it will be insisted by the appellant that even if the Southern Maryland Railroad Company had both title and possession the defendant in error never took actual possession of the property and the devolution of its title, as shown by the deeds offered in evidence, from the Southern Maryland Company is imperfect.

In order to make this objection plain to the Court, and to answer it fully and conclusively, we think proper to state as succinctly as possible the exact condition of the title and the nature, character and purpose of that deed.

The Southern Maryland Railroad Company was incorporated by the State of Maryland in 1868, to construct and operate a railroad to a point near Point Lookout in that State, and shortly thereafter Congress extended its rights, franchises and privileges (including the right to acquire and own real estate) into the District of Columbia.

Under these powers it bought the nine tracts of land in controversy and constructed its railroad upon them. It subsequently placed a deed of trust upon all its property, that in Maryland as well as that in the District, acquired and to be acquired, to secure one million six hundred thousand dollars. The trustee under this deed was the Central Trust Company of New York. The project languished, the Southern Maryland

Railroad made default and all its property was sold under a decree to a man named Francis E. Gregory (Record, pp. 30-42), who took a deed therefor. A new company, The Washington and Potomac Railroad Company, was then organized, to carry out the objects of the original one (Record, p. 42), and Gregory and his wife conveyed all that he had bought to the new company (Record, p. 46). On the very day (April 1st, 1886), that Gregory and his wife conveyed to the new company, it executed and delivered a deed of trust of the identical property so conveyed, to the Union Trust Company of Philadelphia, trustee, to secure the payment of one million five hundred thousand dollars, which mortgage was duly recorded among the land records of the District of Columbia. (Record, p. 47 *et seq.*). This deed of trust vested the legal title to all the property formerly owned by the Southern Maryland Railroad Company in the Union Trust Company of Philadelphia.

The new company did not prosper, and with a view to its reorganization, proceedings were begun in the Circuit Court of the United States for the District of Maryland, in accordance with the requirements of the Maryland law, to foreclose the above described deed of trust to the Union Trust Company in so far as the property covered by the deed lay within that State. Under these proceedings the Union Trust Company, which was already the trustee with power to sell all of the property under the terms of the deed was also made the trustee of the Court and ordered to sell the property lying within the jurisdiction of the Court. Thereafter, on the 25th day of July, 1901, the Union Trust Company, in the exercise of the powers granted to it both by the deed of trust and by the decree of the Court, executed a deed to the defendant in error conveying not only the property in the State of Maryland, which it had been ordered

to sell, but also the property in the District of Columbia, which had been conveyed to it by the deed of trust and which is the property for the possession of which this action was brought. This deed to defendant in error was duly recorded in the land records of this District (Record, p. 63). It will doubtless be contended that because the deed to the defendant in error does not in terms refer to the power of sale contained in this deed of trust and because no proceedings ancillary to those in Maryland were had in this District the legal title to the property lying within the District did not pass thereunder, although said land is in terms embraced in the deed to the defendant in error and the deed was recorded in the District.

To this we reply that under the deed of trust the Union Trust Company was given the *legal title* to the property with power to convey the same. In this jurisdiction the assistance of the court was not essential to the exercise of this power. The power was not disclaimed in the deed. And whatever are or might have been the recitals of the deed to the defendant in error the fact remains that the Union Trust Company had the *legal title* to the property, and, whether its conveyance to the defendant in error was in the proper exercise of its power or not, the deed conveyed to the defendant in error the same *legal title* which the Trust Company had, and the defendant in error's title can no more be questioned in an action of ejectment or in any proceeding *at law* than the Trust Company's could have been. Even in a court of equity this plaintiff in error, a mere intruder, a naked trespasser, without pretense of title, could not question the title of the defendant in error under this deed. If by appropriate action in equity, it might be done by one having a beneficial interest under the deed of trust to the Union Trust Company, the foundation stone of

such a proceeding would be the fact that this defendant in error was the holder of the *legal title* and as such had become, whether willingly or not, the trustee in the place and stead of the Trust Company.

THE *legal title* TO THE PROPERTY WAS VESTED IN THE UNION TRUST COMPANY OF PHILADELPHIA, TRUSTEE, AND NOT A MERE *power of sale.*
Williams *v.* Jackson, 107 U. S., 478.

In that case, which was an appeal from a decision of the Supreme Court of the District of Columbia, the Court says:

> "The first deed of trust from Sweet and wife did not give the trustees merely a power to release the land on payment of the notes secured thereby, and to sell in default of payment, but it vested the legal title in them. A release of the land before payment of the notes would be a breach of their trust, and would be unavailing in Equity to any one who had knowledge of that breach. (Ins. Co. *v.* Eldridge, 102 U. S., 545, 26 L. Ed., 245). But it would pass the legal title. Taylor *v.* King 6 Manf., 358. Den *v.* Troutman, 7 Fed., 155). The legal title in the land, being in the trustees under the first deed of trust, passed by their deed of release to Mrs. Sweet, and from her, by the second deed of trust to the trustees for Williams."

There a trustee under an ordinary deed of trust, with a power of sale in case of default, fraudulently released the property conveyed to him, as such trustee and falsely recited that the mortgage debt had been paid, and in a controversy between his *cestui qui* trust and a person lending money upon the faith of this fraudulent release the Court held that the *legal title* had passed by the deed of release.

We insist, of course, that the deed from the Union Trust Company was in all respects a valid execution of the power conferred upon it and a faithful performance of the trust, as well as a deed in fee simple of the *legal title* which it acquired under the deed of trust to it from the Washington and Potomac Railroad Company, but we contend further, that, even if the sale of the Union Trust Company to the plaintiff were irregular,

> "An irregular judicial sale made at the suit of a mortgagee, even though no bar to the Equity of redemption, passes to the purchaser at such sale all the rights of the mortgagee as such."

Brobst *v.* Brock, 10 Wallace, 519,
Bryan *v.* Brasius, 162 U. S., 415,
Jones *v.* Mack, 53 Mo., 147,
Brown *v.* Smith, 116 Mass., 108.

We respectfully submit therefore that the defendant in error has fully established its title and its right of possession, the entry upon the lands by the plaintiff in error without right, and the ouster of the defendant in error therefrom, and we submit that the conduct of the plaintiff in error in thus attempting to seize and confiscate the property of the defendant in error, was such as does not commend itself to the favorable consideration of the Court. Your Honors will search the record in vain to discover anything to indicate that the defendant pretends to any loftier title than that of unlawful entry, or, at best of entry upon property which it hoped would prove derelict, but which, a most cursory inspection of the land records would have enabled it to ascertain, was a portion of the property of a corporation actually in operation, but temporarily unable, through lack of funds, to carry out to completion the objects for

which it was organized. We say again, that such conduct will not (as it ought not) meet the approbation of this court.

THE GROUNDS UPON WHICH IT IS SOUGHT TO REVERSE BY THE WRIT OF ERROR ARE FRIVOLOUS AND THE WRIT WAS SUED OUT MERELY FOR DELAY.

The plaintiff in error is a mere trespasser, which, seeing a piece of property apparently unoccupied, entered upon it without semblance or pretense of right and complacently asked the defendant in error "What are you going to do about it?" With equal complacency it now asks this Court to reverse its solemn unanimous decision of the precise question, arising upon similar circumstances on writ of error from the same court.

Bradshaw *v.* Ashley, 180 U. S., 59.

We submit that the judgment should be affirmed.

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